

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

## FORM 10-K

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

for the year ended December 31, 2002

OR

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

for the transition period from  
COMMISSION FILE NUMBERS: 333-99587  
333-99589

### H&E EQUIPMENT SERVICES L.L.C.

(Exact name of registrant as specified in its charter)

Louisiana  
(State of incorporation)

72-1287046  
(I.R.S. Employer Identification No.)

11100 Mead Road, Suite 200,  
Baton Rouge, Louisiana 70816  
(Address of Principal Executive Offices,  
including Zip Code)

(225) 298-5200  
(Registrant's Telephone Number,  
Including Area Code)

Securities Registered Pursuant to Section 12(b) of the Act:  
NONE

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that it 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 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 the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

The aggregate market value of the Registrant's voting stock held by non-affiliates of the Registrant: Not applicable

H&E Holdings L.L.C. owns 100% of our limited liability company interests.

#### DOCUMENTS INCORPORATED BY REFERENCE

Certain exhibits filed with the Registrant's Registration Statements on Form S-4 (File Nos. 333-99587 and 333-99589, as amended) are incorporated by reference into Part III of the Report on Form 10-K.

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## PART I

### ITEM 1. BUSINESS

#### General

H&E Equipment Services L.L.C. and its subsidiaries (as used herein, the "Company", "H&E Equipment Services", "we", "us" and "our") is one of the largest integrated equipment rental, service and sales companies in the United States. Unlike many of our competitors which focus primarily on renting equipment, we also sell new and used equipment and provide extensive parts and service support. This integrated model enables us to effectively manage key aspects of our rental fleet through reduced equipment acquisition costs, efficient maintenance and profitable disposition of rental equipment. Over the past 40 years, we have built an infrastructure that includes a network of 45 facilities, most of which have full-service capabilities, and a workforce that includes a highly-skilled group of more than 500 service technicians and a distinct rental and equipment sales force. We generate a significant portion of our gross profit from parts and service, which we believe provides us with a more stable operating profile than companies that focus solely on equipment rental.

Many of our competitors in the equipment rental market follow a generalist approach, renting a wide variety of equipment. We believe that customers prefer our specialized strategy which focuses our rental activities on and organizes our personnel principally by four core types of equipment (with their respective percentage of our rental fleet's original acquisition cost as of December 31, 2002): (i) hi-lift (58.8%); (ii) cranes (21.1%); (iii) earthmoving (11.4%); and (iv) lift trucks (5.6%) (the remaining 3.1% is comprised of miscellaneous equipment). We believe this strategy fills an important need for specialized equipment knowledge in the market, improves the effectiveness of our rental sales force and strengthens our customer relationships. As of December 31, 2002, our total rental fleet (including equipment under operating leases) consisted of 15,651 pieces with an average age of 34.6 months and an aggregate original acquisition cost of \$549.0 million.

H&E Equipment Services was formed through the combination of Head & Engquist Equipment, L.L.C. ("H&E"), a wholly-owned subsidiary of Gulf Wide Industries, L.L.C. ("Gulfwide") and ICM Equipment Company L.L.C. ("ICM"), which were two leading, regional, integrated equipment rental, service and sales companies operating in contiguous geographical markets. In connection with the combination of H&E and ICM, they were merged with and into Gulf Wide Industries, L.L.C., the parent of H&E, which was renamed H&E Equipment Services L.L.C. H&E, founded in 1961, is located in the Gulf Coast region and operated 26 facilities, most of which were full-service, in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina and Texas. ICM, founded in 1971, operated in the fast-growing Intermountain region, and operated 19 facilities, most of which were full-service, in Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Texas and Utah.

#### Industry Background

According to Manfredi & Associates, a leading industry consultant, the United States equipment rental industry has grown from approximately \$6.5 billion in annual rental revenues in 1990 to approximately \$24.3 billion in 2002, representing a compound annual growth rate of approximately 17.3%. We believe this growth was principally due to increased outsourcing by construction and industrial companies as they realized the economic benefits of renting rather than owning equipment. We believe that despite recent consolidations in the rental industry, the market is still highly fragmented and consists mainly of a small number of multi-location regional or national operators and a large number of relatively small, independent businesses serving discrete, local markets.

#### Our Competitive Strengths

We believe that we benefit from the following competitive strengths:

*Integrated Platform of Products and Services.* We believe that our integrated equipment rental, service and sales model provides us with: (i) multiple points of customer contact; (ii) a diversified revenue stream; (iii) an effective method to manage our rental fleet through reduced equipment acquisition costs, efficient maintenance and profitable disposition of used equipment; and (iv) a more consistent performance throughout economic cycles. Key benefits that our integrated product and service offerings provide to our rental activities include:

- *Increasing Purchasing Power Through Complementary New Equipment Sales.* We have significant purchasing power because of our large volume purchases as both a renter and distributor of equipment.
- *Maintaining the High Quality of Our Large Rental Fleet.* We believe that we operate one of the largest rental fleets in the Gulf Coast and Intermountain regions. We maintain a constant and extensive fleet maintenance program through our in-house capabilities.
- *Disposing of Our Used Rental Equipment through Our Retail Sales Network.* We believe we have a strategic advantage by being able to profitably dispose of used equipment from our rental fleet through our own retail sales infrastructure, as compared to selling wholesale or through auctions.

Our resale capabilities allow us to control the utilization and the age of our fleet, provide customers with a wider range of equipment options and leverage our equipment sales force infrastructure, which includes over 75 specialized sales people.

*High-Margin, Stable Parts and Service Business.* Our parts and service business is a key component of the integrated offering we provide to both our customers and our own rental fleet. We believe that our aftermarket parts and service operations are less susceptible to economic and business cycles and thus provide a stable, recurring, high-margin stream of revenues.

*Well-Developed Infrastructure.* Over the past 40 years, we have built an infrastructure that, after the combination of H&E and ICM, includes a network of 45 facilities, most of which have full-service capabilities, and a workforce that includes a highly-skilled group of more than 500 service technicians and a distinct rental and equipment sales force. In addition, our well-developed infrastructure helps us to better serve large multi-regional customers and provides an advantage when competing for fleet and project management business.

*Diverse Customer Base.* We serve more than 26,000 customers in the industrial and commercial markets, including construction and maintenance contractors, manufacturers, public utilities and municipalities.

*Experienced Management Team.* Senior management, led by Gary W. Bagley, our Chairman, and John M. Engquist, our President and Chief Executive Officer, has an average of 22 years of experience in the industry and an average of 14 years of experience with H&E or ICM, as the case may be.

## Our Business Strategy

Key components of our business strategy include:

*Leveraging the Integrated Equipment Rental Model.* Because our customers rarely just rent equipment, we believe that they value our integrated approach to addressing their equipment rental, service and sales needs. In addition to renting equipment, many of our customers purchase new and

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used equipment from us and utilize our extensive parts and service support. We believe this integrated model helps us to develop and strengthen relationships with our customers.

*Specializing in Rental of Core Equipment Types.* Many of our competitors in the equipment rental market follow a generalist approach, renting a wide variety of equipment. We believe that customers generally prefer our strategy which focuses our rental activities on and organizes our personnel by our four core types of equipment: hi-lift, cranes, earthmoving, and lift trucks.

*Leveraging Industry-Leading Parts and Service Operations.* Our parts and service business is an important part of our relationships with our suppliers and rental customers. Given their decreased project timelines and reliance on fewer pieces of equipment, we believe our customers increasingly place more importance on effective and timely parts and service support for their own fleet of equipment as well as for equipment that they rent.

*Optimizing Economics of Combined Fleet.* We believe that there are significant opportunities to optimize our rental fleet economics through the integration of the H&E and ICM fleets. As a result of the combination of H&E and ICM, we are able to move rental equipment between our expanded markets to: (i) more profitably utilize our rental fleet to meet demand in a particular geography; (ii) manage our fleet utilization by cross-selling used equipment from our rental fleet across our expanded retail network; and (iii) improve our ability to service large, multi-regional customers.

*Expanding Fleet Management Capabilities and Project Management Operations.* We intend to grow our revenues from fleet and project management services by leveraging our broad infrastructure, full-service capabilities and strong reputation for reliable service. End users, particularly industrial accounts (e.g., manufacturing, mining, and distribution) for fleet management services and contractors for project management, increasingly outsource equipment management in order to focus on their core competencies, achieve cost reductions and take advantage of our economies of scale. For example, as a result of the combination of H&E and ICM, we recently have been awarded a contract with a national construction contractor to be the sole provider of its equipment needs, including equipment rental, new equipment, used equipment and related parts and service.

*Pursue Complementary Acquisitions.* Since 1998, we have been focused primarily on growing our business organically, opening 18 locations in 11 states. Over this period, we have made only one acquisition for \$10.6 million, which expanded our presence in the crane rental, service and sales business in the Gulf Coast region. Going forward, we may make strategic acquisitions that complement our existing products and services or strengthen our presence in a particular geographic market. We expect to face competition for acquisition candidates, which may limit the number of acquisition opportunities and lead to higher acquisition costs. We may not have the financial resources necessary to consummate any acquisitions or to successfully open new facilities in the future, or the ability to obtain the necessary funds on satisfactory terms. We currently have no planned acquisitions.

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## Products and Services

### Equipment Rental

We focus our rental activities on, and organize our personnel by, four core types of equipment (with their respective percentage of our fleet's original acquisition cost as of December 31, 2002): (i) hi-lift equipment (58.8%); (ii) cranes (21.1%); (iii) earthmoving equipment (11.4%); and (iv) lift trucks (5.6%) (the remaining 3.1% is comprised of miscellaneous equipment). We offer flexible rental terms, including hourly, daily, weekly and monthly rentals. We maintain a constant and extensive fleet maintenance program through our in-house capabilities. The details of our rental fleet as of December 31, 2002 are as follows:

Units	Original Acquisition Cost(1)	Average Age (Months)

(Dollars in thousands)

<b>Owned equipment:</b>				
Hi-lift	8,250	\$	241,589	35.2
Cranes	466		100,819	43.0
Earthmoving	874		62,500	28.7
Lift trucks	1,349		30,320	38.0
Other	2,050		17,269	35.8
<b>Total</b>	<b>12,989</b>		<b>452,497</b>	<b>35.4</b>
<b>Equipment under operating leases:</b>				
Hi-lift	2,587		81,711	30.0
Cranes	59		14,762	58.1
Lift trucks	11		266	68.3
Other	5		189	67.0
<b>Total</b>	<b>2,662</b>		<b>96,928</b>	<b>30.8</b>
<b>Grand total</b>	<b>15,651</b>	<b>\$</b>	<b>549,425</b>	<b>34.6</b>

(1) Represents amounts originally paid to manufacturers for equipment.

### ***New Equipment Sales***

We are one of the leading distributors of new products for nationally-recognized manufacturers. Typically under distribution agreements with these original equipment manufacturers, we have exclusive responsibility for particular products in selected markets, although manufacturers retain the right to appoint additional dealers and sell directly to national accounts and governmental agencies and can usually terminate the distribution agreements at any time upon written notice. We maintain an experienced equipment sales force of over 75 people. Our new equipment distribution infrastructure facilitates a large, high-quality product support operation, creates a higher level of partnering with manufacturers and adds a significant customer base which often leads to revenue from our rental and parts and service operations. The type of new equipment we sell varies by location.

### ***Used Equipment Sales***

We routinely sell used rental equipment in order to adjust the size and composition of our rental fleet to changing market conditions and to maintain a modern, high-quality fleet. We believe we have a strategic advantage by being able to profitably dispose of used equipment from our rental fleet through our own retail sales infrastructure, as compared to selling wholesale or through auctions. Our resale

capabilities allow us to control the utilization and the age of our fleet, provide customers with a wider range of equipment options and leverage our equipment sales force infrastructure.

### ***Parts and Service***

We sell a wide range of OEMs' maintenance and replacement parts and related products as a complement to our core equipment rental and sales businesses. We maintain in our facilities an extensive parts and merchandise inventory which we believe is important for timely parts and service support and helps minimize customer downtime for us and for our customer. We are generally able to acquire nonstock or out-of-stock parts directly from manufacturers within one to two business days. We supply parts and general repair and maintenance service for the complete line of equipment we rent and sell as well as for equipment produced by competitive manufacturers whose products we neither rent nor sell.

We employ more than 500 highly-skilled service technicians. As part of our commitment to provide customers with knowledgeable parts assistance and high-quality service and repair options, we devote significant resources to training and retaining these technical service employees. A typical service employee will attend approximately 80 hours of training in the first year and 80-120 hours annually in subsequent years. We are able to attract and retain knowledgeable, highly-skilled service technicians due to our strong relationship with our service employees and ties to the communities. Our aftermarket service provides a high-margin, stable source of revenue throughout changing economic cycles.

### ***Customers***

We serve more than 26,000 customers across 16 states. Our customers include a wide range of industrial and commercial companies and construction contractors, manufacturers, public utilities, municipalities, maintenance contractors and a variety of other large industrial accounts. We believe that our integrated strategy enables us to satisfy customer requirements and increase revenue per customer through cross-selling opportunities presented by the various products and services that we offer. In addition to maintaining our historically strong relationship with local customers, our extensive, high-quality infrastructure allows us to focus on larger regional and national accounts. Our new and used equipment sales customers vary from small, single machine owners to large contractors and industrial and commercial companies who typically operate under equipment and maintenance budgets and are excellent prospects for fleet management services.

### ***Sales and Marketing***

We have separate sales forces specializing in equipment rentals and new and used equipment sales. We believe maintaining separate sales forces for rental and sales is important to our customer service, allowing us to most effectively meet the demands of different types of customers.

Our rental sales force and new and used equipment sales force, together comprising over 175 people, are divided into smaller, product focused teams which enhances the development of in-depth product application and technical expertise. To further develop knowledge and experience, we provide our sales force with extensive training, including frequent factory and in-house training by manufacturer representatives regarding the operational features, operator safety training and maintenance of new equipment. This training is essential, as our sales personnel regularly call on contractors' job sites often assisting customers in assessing their immediate and ongoing equipment needs.

While we believe that our specialized, well-trained sales force strengthens our customer relationships and fosters customer loyalty, we rely on additional marketing and advertising tools, including direct mail campaigns and print advertising focused primarily on the Yellow Pages and industry trade publications. In addition, we have a commission-based compensation program for our sales force.

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We have implemented a national accounts program in order to develop national relationships and increase awareness of our extensive offering of industrial and construction equipment, ancillary products, parts and services. Under this program, a portion of our sales force is assigned to call on corporate headquarters of our large customers, particularly those with a national or multi-regional presence.

### **Suppliers**

Currently, we purchase most of our equipment from the same manufacturers with whom we have distribution agreements. While we believe that we have alternative sources of supply for the equipment we purchase in each of our principal product categories, termination of one or more of our relationships with any of our major suppliers of equipment could have a material adverse effect on our business, financial condition or results of operation if we were unable to obtain adequate or timely rental and sales equipment.

### **Information Technology Systems**

We have developed information systems that track: (i) rental inventory utilization statistics; (ii) maintenance and repair costs; (iii) returns on investment for specific equipment types; and (iv) detailed operational and financial information for each piece of equipment. We believe that this provides us with a competitive advantage over smaller independent rental companies which lack such systems. The point-of-sale aspect of the systems enables us to link all of our facilities, permitting universal access to real-time data concerning equipment located at the individual facility locations and the rental status and maintenance history of each piece of equipment. These business systems also include on-line contract generation, automated billing, local sales tax computation and automated rental purchase option calculation. In addition, we maintain an extensive customer database which allows us to monitor the status and maintenance history of our customers' equipment and enables us to more effectively provide parts and service to meet their needs.

### **Competition**

The equipment rental industry is highly fragmented and competitive. Many of the markets in which we operate are served by numerous competitors, ranging from national and multi-regional equipment rental companies to small, independent businesses with a limited number of locations. We believe that participants in the equipment rental industry compete on the basis of availability and quality of equipment, service, delivery and price. In general, we believe that large operators enjoy substantial competitive advantages over small, independent rental businesses that cannot afford to maintain the comprehensive rental equipment fleet and high level of maintenance and service that we offer.

Like the rental industry, the retail sales and distribution industry is being redefined through consolidation and competition. Traditionally, equipment manufacturers distributed their equipment and parts through a network of independent dealers with exclusive distribution agreements. As a result of the consolidation and competition, both manufacturers and distributors are seeking to streamline their operations, improve their costs and gain market share. In addition, our established, integrated infrastructure enables us to compete directly with our competitors on either a local, regional or national basis. Moreover, we believe customers are placing greater emphasis on value-added services and teaming with equipment rental and sales companies who can meet all of their equipment parts and service needs.

### **Environmental and Safety Regulations**

Our facilities and operations are subject to comprehensive and frequently changing federal, state and local environmental and occupational health and safety requirements, including those relating to

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discharges of substances to the air, water and land, the handling, storage, use and disposal of hazardous materials and wastes and the cleanup of properties affected by pollutants. We do not currently anticipate any material adverse effect on our business or financial condition or competitive position as a result of our efforts to comply with our liability under such requirements. Although we have made and will continue to make capital and other expenditures to comply with environmental requirements, we do not expect to incur material capital expenditures for environmental controls or compliance in this or the succeeding fiscal year.

In the future, federal, state or local governments could enact new or more stringent laws or issue new or more stringent regulations concerning environmental and worker health and safety matters, or effect a change in their enforcement of existing laws or regulations, that could effect our operations. Also, in the future, contamination may be found to exist at our facilities or off-site locations where we have sent wastes. Many of our properties have been the subject of Phase I or Phase II Environmental Site Assessments, but there can be no assurance that we will not discover previously unknown environmental non-compliance or contamination. We could be held liable for such newly-discovered non-compliance or contamination. It is possible that changes in environmental and worker health and safety requirements or liabilities from newly-discovered non-compliance or contamination could have a material adverse effect on our business, financial condition and results of operations.

### **Employees**

As of December 31, 2002, we had approximately 1,447 employees. Of these employees, 457 are salaried personnel and 990 are hourly personnel. Our employees perform the following functions: sales operations, parts operations, rental operations, technical service and office and administrative support. Collective bargaining agreements relating to four separate locations cover approximately 97 of our employees. We believe our relations with our employees are good and we have never experienced a work stoppage.

## RISK FACTORS

### Sensitivity to Changes in Construction and Industrial Risk Factors Activities

Our equipment is principally used in connection with construction and industrial activities. Consequently, a downturn in construction or industrial activity may lead to a decrease in the demand for our equipment or depress rental rates and the sales prices for the equipment we sell. We have identified below certain of the factors which may cause such a downturn, either temporarily or long-term:

- a continuation or a worsening of the recent slow-down of the economy over the long-term;
- an increase in interest rates; or
- adverse weather conditions which may affect a particular region.

### Fluctuating Operating Results

Our revenue and operating results have historically varied from quarter to quarter. Periods of decline could result in an overall decline in profitability and make it more difficult for us to make payments on our debt. We expect our quarterly results to continue to fluctuate in the future due to a number of factors, including:

- seasonal sales and rental patterns of our construction customers, with sales and rental activity tending to be lower in the winter;
- general economic conditions in the markets where we operate;

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- the effectiveness of integrating acquired businesses and new locations;
  - cyclical nature of our customers' business, particularly our construction customers;
  - price changes in response to competitive factors; and
  - timing of acquisitions and new location openings and related costs.

In addition, we incur various costs in integrating newly acquired businesses or opening locations, and the profitability of a new location is generally expected to be lower in the initial months of operation.

### Substantial Indebtedness

We have a substantial amount of debt. As of December 31, 2002, our total indebtedness (consisting of the aggregate amounts outstanding on the senior secured credit facility, senior secured notes, senior subordinated notes, and capital leases) was approximately \$328.7 million, \$76.7 million of which was first-priority secured debt and effectively senior to our senior secured notes and senior subordinated notes. In addition, subject to restrictions in our senior secured credit facility and the indenture governing the senior secured notes, we may incur additional first-priority secured borrowings under the senior secured credit facility. There is no limit to the amount of such additional debt. Further, the senior secured notes and senior subordinated notes are effectively subordinated to our obligations under capitalized leases of which \$10.8 million existed as of December 31, 2002, to the extent of the value of their capitalized leases. Additionally, as of December 31, 2002, the senior secured notes and senior subordinated notes were effectively subordinated to our obligations under \$55.1 million of first-priority secured floor plan financing to the extent of the value of their collateral, \$1.4 million in notes payable and \$0.5 million in standby letters of credit.

The level of our indebtedness could have important consequences, including:

- a substantial portion of our cash flow from operations will be dedicated to debt service and may not be available for other purposes;
- making it more difficult for us to satisfy our obligations;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- obtaining financing in the future for working capital, capital expenditures and general corporate purposes, including acquisitions, and may impede our ability to secure favorable lease terms;
- making us more vulnerable to economic downturns and may limit our ability to withstand competitive pressures; and
- placing us at a competitive disadvantage compared to our competitors with less debt.

### Additional Capital

The cash that we generate from our business, together with cash that we may borrow under our senior secured credit facility, may not be sufficient to fund our capital requirements. As a result, we may require additional capital for, among other purposes, purchasing equipment, completing acquisitions, establishing

## **Restrictive Covenants**

The operating and financial restrictions and covenants in our debt agreements, including the senior secured credit facility and the indenture, may adversely effect our ability to finance future operations or capital needs or to engage in other business activities. Our senior secured credit facility requires us to maintain specified financial ratios and tests, including interest coverage and total leverage ratios and maximum capital expenditures, which may require that we take action to reduce debt or to act in a manner contrary to our business objectives. In addition, the senior secured credit facility and the senior secured and senior subordinated notes restrict our ability to, among other things:

- incur additional indebtedness;
- dispose of assets;
- incur guarantee obligations;
- repay indebtedness or amend debt instruments;
- pay dividends;
- create liens on assets;
- make investments;
- make acquisitions;
- engage in mergers or consolidations; or
- engage in certain transactions with subsidiaries and affiliates and otherwise restrict corporate activities.

A failure to comply with the restrictions contained in the senior secured credit facility could lead to an event of default which could result in an acceleration of the indebtedness. Such an acceleration would constitute an event of default under the indenture governing the senior secured notes. A failure to comply with the restrictions in the senior secured notes indenture could result in an event of default under the indenture. Our future operating results may not be sufficient to enable compliance with the covenants in the senior secured credit facility, the indenture or other indebtedness or to remedy any such default. In addition, in the event of an acceleration, we may not have or be able to obtain sufficient funds to make any accelerated payments, including those under the senior secured notes.

On March 31, 2003, the senior secured credit facility was amended to extend the current year's requirement for filing the Company's audited financial statements to the earlier of April 15, 2003, or the date the Company files its annual report on Form 10-K with the Securities and Exchange Commission.

## **Dependence on Management**

We are dependent on the experience and continued services of our senior management team. If we lose the services of any member of this team and are unable to find a suitable replacement, we may not have the depth of senior management resources required to efficiently manage our business and execute our strategy.

## **Competition**

The equipment rental and retail distribution industries are highly competitive and the equipment rental industry is highly fragmented. Many of the markets in which we operate are served by numerous competitors, ranging from national and multi-regional equipment rental companies to small, independent businesses with a limited number of locations. We generally compete on the basis of,

among other things: (i) quality and breadth of service; (ii) expertise; (iii) reliability; and (iv) price. We may encounter increased competition from existing competitors or new market entrants in the future, which could have a material adverse effect on our business, financial condition and results of operations.

## **Liability and Insurance**

Our business exposes us to claims for personal injury, death or property damage resulting from the use of the equipment we rent or sell and from injuries caused in motor vehicle accidents in which our delivery and service personnel are involved. We carry comprehensive insurance, subject to deductibles, at levels we believe are sufficient to cover existing and future claims. Although we have not experienced any material losses that were not covered by insurance, our existing or future claims may exceed the level of our insurance, and such insurance may not continue to be available on economically reasonable terms, or at all.

## **Environmental and Safety Regulations**

Our operations, like those of other companies engaged in similar businesses, require the handling, use, storage and disposal of certain regulated materials. As a result, we are subject to the requirements of federal, state and local environmental and occupational health and safety laws and regulations. We may not be at all

times in complete compliance with all such requirements. We are subject to potentially significant fines or penalties if we fail to comply with any of these requirements. We have made and will continue to make capital and other expenditures in order to comply with these laws and regulations. However, the requirements of these laws and regulations are complex, change frequently, and could become more stringent in the future. It is possible that these requirements will change or that liabilities will arise in the future in a manner that could have a material adverse effect on our business, financial condition and results of operations.

## FORWARD-LOOKING STATEMENTS

Certain statements in this Annual Report on our Form 10-K for the year ended December 31, 2002 are forward-looking statements, including, without limitation, statements regarding future financial results and performance, potential sales revenue, legal contingencies and tax benefits. These statements are subject to various risks and uncertainties, many of which are outside of our control, including the level of market demand for our products, competitive pressures, the ability to achieve reductions in operating costs, environmental matters, the application of Federal and state tax laws and regulations, and other specific factors discussed herein and in other Securities and Exchange Commission filings by us. The information contained herein represents our best judgement as of the date hereof based on information currently available; however, we do not intend to update this information except as required by law, to reflect development or information obtained after the date hereof and disclaim any legal obligation to the contrary.

## ITEM 2. PROPERTIES

We currently have a network of 45 facilities. We serve customers in the Gulf Coast region, including the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina and Texas and in the Intermountain region, including the states of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Washington.

Facility locations typically serve a 25 to a 100 mile radius. In our facilities, we rent, display and sell equipment, including tools and supplies, and provide maintenance and basic repair work. We own four

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of our locations and lease 41 locations. Our leases provide for varying terms and renewal options. The following table provides data on our locations:

City/State	Date Opened(a)	Services Offered(b)	Leased/Owned	Approx. Square Footage
<b>Alabama</b>				
Birmingham	1984	S, P, SV, A	Leased	26,000
<b>Arizona</b>				
Nogales	1998	S, R, P, SV	Leased	2,800
Phoenix	1990	S, R, P, SV, A	Leased	40,000
Tucson	1991	S, R, P, SV	Leased	14,000
<b>Arkansas</b>				
Fort Smith	1995	S, P, SV	Leased	7,200
Little Rock	1995	S, R, P, SV, A	Owned	30,000
Springdale	1996	S, R, P, SV, A	Owned	16,200
<b>Colorado</b>				
Denver	1985	S, R, P, SV, A	Leased	15,000
Colorado Springs	2000	S, R, P, SV	Leased	13,000
<b>Florida</b>				
Fort Myers	2000	S, R, P, SV	Leased	7,000
Orlando	2000	S, R, P, SV, A	Leased	27,500
Tampa	2000	S, R, P, SV, A	Leased	28,900
<b>Georgia</b>				
Atlanta	2000	S, R, P, SV, A	Leased	17,000
<b>Idaho</b>				
Boise	1997	S, R, P, SV	Leased	6,000
Coeur D'Alene	1997	S, R, P, SV	Leased	5,000
<b>Louisiana</b>				
Alexandria	1995	S, R, P, SV, A	Leased	6,500
Baton Rouge	1961	S, P, SV, A	Leased	56,900
Belle Chasse(2)	1965	S, P, SV, A	Leased(1)/Owned(1)	22,500
Gonzales	1995	R, P, SV, A	Leased	7,000
Kenner	1978	S, P, SV, A	Leased	36,000
Lake Charles	1988	S, R, P, SV, A	Leased	10,500
Shreveport(2)	1985	S, R, P, SV, A	Leased(2)	39,600
<b>Mississippi</b>				
Jackson	1997	S, P, SV, A	Leased	15,000
<b>Montana</b>				
Billings	1981	S, R, P, SV	Leased	10,000
Bozeman	2000	S, R, P, SV	Leased	8,800
Missoula	1984	S, R, P, SV	Leased	7,000
<b>New Mexico</b>				
Albuquerque	1994	S, R, P, SV	Leased	7,100
Farmington	1991	S, R, P, SV	Leased	5,000
<b>Nevada</b>				



Las Vegas	1983	S, R, P, SV, A	Leased	78,000
Reno	1996	S, R, P, SV	Leased	30,000
<b>North Carolina</b>				
Charlotte	2000	S, R, P, SV, A	Leased	25,000

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<b>Texas</b>				
Dallas(2)	1948	S, R, P, SV, A	Leased(2)	44,500
El Paso	1999	S, P, SV	Leased	12,000
Houston(3)	1947	S, R, P, SV, A	Leased(2)/Owned(1)	89,600
San Antonio	1996	S, R, P, SV, A	Owned	13,000
Weslaco	2001	S, R, P, SV, A	Leased	43,600
<b>Utah</b>				
Lindon	1999	S, R, P, SV	Leased	9,000
Ogden	1999	S, R, P, SV	Leased	9,000
Salt Lake City	1971	S, R, P, SV, A	Leased	119,000
St. George	1997	S, R, P, SV	Leased	7,500

(a) Reflects the earliest date H&E, ICM or their respective predecessors opened a facility in the indicated market.

(b) S-Sales, R-Rentals, P-Parts, SV-Service, A-Administration

Each facility location has a manager who is responsible for day-to-day operations. In addition, facilities are typically staffed with approximately 10 to 50 people, who may include technicians, salesmen, rental operations staff and parts specialists. While facility offices are typically open five days a week, we provide 24 hour, seven day per week service.

We maintain a fleet of over 450 vehicles that are used for delivery, maintenance and sales functions. We own a portion of this fleet and lease the remainder.

Our corporate headquarters are located in Baton Rouge, Louisiana, where we occupy approximately 18,400 square feet under a lease that extends until February 28, 2007.

### ITEM 3. LEGAL PROCEEDINGS

As of December 31, 2002, except for the legal proceeding referred to below, we were not subject to any legal proceedings that management believes could have a material adverse effect on our business or financial condition.

In July 2000, a complaint was filed in the General Court of Justice, Superior Court Division, State of North Carolina, County of Mecklenburg under the caption Sunbelt Rentals, Inc. v. Head & Engquist Equipment, L.L.C., d/b/a H&E Hi-Lift, et al. The complaint was filed by a competitor of H&E, BPS Equipment, which was acquired by the plaintiff in June 2000, against H&E, Robert W. Hepler, an executive officer, and other employees of H&E. The complaint alleges, among other things, breach of fiduciary duty, misappropriation of trade secrets, unfair trade practices, interference with prospective advantage and civil conspiracy, in connection with the start-up of H&E's Hi-Lift division in January 2000 and the hiring of former employees of BPS Equipment. The complaint seeks, among other things, an order to enjoin the defendants from using BPS Equipment's trade secrets, award the plaintiff unspecified compensatory and punitive damages and award the plaintiff its costs and attorneys' fees. This case is currently being heard in the General Court of Justice, Superior Court Division, State of North Carolina, County of Mecklenburg.

### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matter was submitted to a vote of our security holders.

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## PART II

### ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Not Applicable.

### ITEM 6. SELECTED FINANCIAL DATA

The selected historical data and other financial data set forth below, should be read in conjunction with our audited financial statements and the related notes included elsewhere in this report. The Company's consolidated financial statements as of December 31, 1998, 1999, 2000 and 2001, and for the years ended December 31, 1998, 1999 and 2001 have been restated. For a further discussion of the restatement see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Restatement of Financial Statements," included herein within Item 7 of Part II, and the historical financial statements and the related notes including without limitation Note 20, included herein as Item 8 of Part II.

For the Year Ended December 31,

1998	1999	2000	2001	2002 <sup>(1)</sup>
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(Dollars in thousands)

	(Restated)	(Restated)		(Restated)	
<b>Statement of operations data:</b>					
Revenues:					
Equipment rentals	\$ 44,484	\$ 52,039	\$ 70,625	\$ 98,696	\$ 136,624
New equipment sales	38,191	76,703	53,345	84,138	72,143
Used equipment sales	55,408	42,797	51,402	59,441	52,487
Parts sales	22,012	30,328	34,435	36,524	47,218
Service revenues	11,211	13,949	16,553	19,793	27,755
Other	4,425	5,847	8,236	10,925	15,473
<b>Total revenues</b>	<b>175,731</b>	<b>221,663</b>	<b>234,596</b>	<b>309,517</b>	<b>351,700</b>
Cost of revenues:					
Equipment rentals	27,492	32,533	39,545	53,158	83,879
New equipment sales	34,156	68,428	47,910	77,442	66,055
Used equipment sales	44,079	34,838	44,401	51,378	43,026
Parts sales	16,808	22,144	25,846	27,076	34,011
Service revenues	4,583	6,662	7,139	8,106	11,438
Other	5,832	9,021	11,488	14,439	16,813
<b>Total cost of revenues</b>	<b>132,950</b>	<b>173,626</b>	<b>176,329</b>	<b>231,599</b>	<b>255,222</b>
Gross profit:					
Equipment rentals	16,992	19,506	31,080	45,538	52,745
New equipment sales	4,035	8,275	5,435	6,696	6,088
Used equipment sales	11,329	7,959	7,001	8,063	9,461
Parts sales	5,204	8,184	8,589	9,448	13,207
Service revenues	6,628	7,287	9,414	11,687	16,317
Other	(1,407)	(3,174)	(3,252)	(3,514)	(1,340)
<b>Total gross profit</b>	<b>42,781</b>	<b>48,037</b>	<b>58,267</b>	<b>77,918</b>	<b>96,478</b>
Selling, general and administrative expenses	26,902	35,369	46,001	55,382	82,294
Gain on sale of property and equipment	5	952	—	46	59
<b>Income from operations</b>	<b>15,884</b>	<b>13,620</b>	<b>12,266</b>	<b>22,582</b>	<b>14,243</b>
Other income (expense):					
Interest expense	(10,754)	(17,711)	(22,909)	(17,995)	(28,955)
Other	1,052	277	187	156	372
<b>Total other expense</b>	<b>(9,702)</b>	<b>(17,434)</b>	<b>(22,722)</b>	<b>(17,839)</b>	<b>(28,583)</b>
<b>Income (loss) before income taxes</b>	<b>6,182</b>	<b>(3,814)</b>	<b>(10,456)</b>	<b>4,743</b>	<b>(14,340)</b>
Provision (benefit) for income taxes	2,595	(660)	(3,123)	1,443	(1,271)
<b>Net income (loss)</b>	<b>\$ 3,587</b>	<b>\$ (3,154)</b>	<b>\$ (7,333)</b>	<b>\$ 3,300</b>	<b>\$ (13,069)</b>

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For the Year Ended December 31,

	1998	1999	2000	2001	2002 <sup>(1)</sup>
(Dollars in thousands)					
<b>Other financial data:</b>					
Depreciation and amortization <sup>(2)</sup>	\$ 25,268	\$ 28,331	\$ 30,541	\$ 32,163	\$ 49,491
<b>Statement of cash flows:</b>					
Net cash (used in) provided by operating activities	60,980	(8,417)	(14,588)	30,115	19,674
Net cash (used in) provided by investing activities	34,665	(25,645)	16,252	(37,846)	(13,049)
Net cash provided by (used in) financing activities	(94,540)	34,938	(2,712)	10,426	(7,549)
As of December 31,					
	1998	1999	2000	2001	2002
(Dollars in thousands)					
	(Restated)	(Restated)	(Restated)	(Restated)	

**Balance sheet data:**

Cash	\$ 1,799	\$ 2,675	\$ 1,627	\$ 4,322	\$ 3,398
Rental equipment, net	144,623	168,018	147,228	195,701	309,697

Goodwill, net	2,556	3,442	3,454	3,204	3,204
Total assets	221,231	260,265	245,961	287,129	468,619
Total debt	141,117	205,171	204,597	192,908	328,737
Members' equity (deficit) <sup>(3)</sup>	18,681	(8,569)	(15,902)	29,899	24,430

- (1) Includes the results of operations of ICM from June 18, 2002 through December 31, 2002.
- (2) Excludes amortization of debt issuance costs which is included in interest expense.
- (3) Members' equity (deficit) consists of total redeemable preferred units classified outside equity and total members' equity (deficit).

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

Certain statements in this Annual Report on our Form 10-K for the year ended December 31, 2002 are forward-looking statements, including, without limitation, statements regarding future financial results and performance, potential sales revenue, legal contingencies and tax benefits. These statements are subject to various risks and uncertainties, many of which are outside of our control, including the level of market demand for our products, competitive pressures, the ability to achieve reductions in operating costs, environmental matters, the application of Federal and state tax laws and regulations, and other specific factors discussed herein and in other Securities and Exchange Commission filings by us. The information contained herein represents our best judgement as of the date hereof based on information currently available; however, we do not intend to update this information except as required by law, to reflect development or information obtained after the date hereof and disclaim any legal obligation to the contrary.

Managements' Discussion and Analysis of Financial Condition and Results of Operations presented below reflects certain restatements to our previously reported consolidated audited financial statements as of and for the years ended December 31, 2000 and 2001. The information set forth below should be read together with Company's audited consolidated financial statements and related notes appearing elsewhere herein.

### General

H&E Equipment Services is a wholly-owned subsidiary of H&E Holdings. H&E Holdings is principally a holding company conducting all of its operations through H&E Equipment Services. The consolidated financial statements include the results of operations of H&E Equipment Services and its

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wholly-owned subsidiaries H&E Finance Corp., GNE Investments, Inc. and Great Northern Equipment, Inc.

H&E Equipment Services is an integrated equipment rental, service and sales company located in the United States with an integrated network of 45 facilities, most of which have full service capabilities, and a workforce that includes a group of service technicians and a separate rental and equipment sales force. In addition to renting equipment, we also sell new and used equipment and provide extensive parts and service support. We generate a significant portion of our gross profit from parts sales and service revenues.

We derive our revenues from the following sources: (i) rental of equipment; (ii) new equipment sales and distribution; (iii) used equipment sales and distribution; and (iv) parts and service. Equipment rental, as well as new and used equipment sales, includes products such as hi-lift equipment, cranes, earthmoving equipment and industrial lift trucks. Used equipment sales are primarily derived from our rental fleet. Our integrated approach leads to revenue for each source being partially driven by the activities of the other sources. Our revenues are dependent on several factors, including the demand for rental equipment, rental fleet availability, rental rates, the demand for new and used equipment, the level of industrial and construction activity and general economic conditions.

Cost of revenues include cost of equipment sold, depreciation and maintenance costs of rental equipment and cost of parts and service. Cost of equipment sold consists of (i) the net book value of rental equipment at the time of sale for used equipment and (ii) the cost for new equipment sales. Depreciation of rental equipment represents the depreciation costs attributable to rental equipment and is generally calculated on a straight-line basis over the estimated service life of the asset (generally three to ten years with a 0% to 25% residual value). Maintenance of rental equipment represents the costs of servicing and maintaining rental equipment on an ongoing basis. Cost of parts and service represents costs attributable to the sale of parts directly to customers and service provided for the maintenance and repair of customer owned equipment.

Selling, general and administrative expenses include sales and marketing expenses, payroll and related costs, professional fees, property, other taxes and administrative overhead, depreciation associated with property and equipment (other than rental equipment).

### Critical Accounting Policies and Estimates

We prepare our financial statements in accordance with accounting principles generally accepted in the United States. A summary of our significant accounting policies is in the notes to our consolidated financial statements included elsewhere in this report. In applying many accounting principles, we need to make assumptions, estimates and/or judgments. These assumptions, estimates and judgments are often subjective and may change based on changing circumstances or changes in our analysis. Material changes in these assumptions, estimates and judgments have the potential to materially alter our results of operations. We have identified below those of our accounting policies that we believe could potentially produce materially different results were we to change underlying assumptions, estimates and judgments.

**Revenue Recognition.** Rental revenue is recognized in the period in which it is earned over the contract term. Revenue from the sale of equipment and parts is recognized at the time of delivery to, or pick-up by, the customer and when all obligations under the sales contract have been fulfilled and collectability is reasonably assured. Service revenues are recognized at the time the services are rendered. Other revenues consist principally of billings to customers for rental equipment delivery and damage waiver charges.

**Allowance for Doubtful Accounts.** We maintain allowances for doubtful accounts. This allowance reflects our estimate of the amount of our receivables that we will be unable to collect. Our estimate could require change based on changing circumstances, including changes in the economy or in the

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particular circumstances of individual customers. Accordingly, we may be required to increase or decrease our allowance.

*Useful Lives of Rental Equipment and Property and Equipment.* We depreciate rental equipment and property and equipment over their estimated useful lives, after giving effect to an estimated salvage value of 0% to 25% of cost. The useful life of an asset is determined based on our estimate of the period the asset will generate revenues, and the salvage value is determined based on our estimate of the minimum value we could realize from the asset after such period. We may be required to change these estimates based on changes in our industry or other changing circumstances. If these estimates change in the future, we may be required to recognize increased or decreased depreciation expense for these assets.

*Impairment of Long-Lived Assets.* Long-lived assets are recorded at the lower of amortized cost or fair value. The Company reviews long-lived assets and certain identifiable intangibles for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset over the remaining useful life. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets.

## Restatement of Financial Statements

The Company's previously issued consolidated financial statements as of and for the year ended December 31, 2001 have been restated to correct errors related to the calculation of unbilled rental revenue and deferred revenue related to rental contracts with terms that extend across reporting periods. As a result of the restatement, we also made corrections to income tax accounts, members' equity, and other related items.

Our policy is to recognize revenue from equipment rentals in the period earned, over the contract term, regardless of the timing of the billing to customers. A rental contract term can be daily, weekly or monthly. Because the term of the contracts can extend across financial reporting periods, we record unbilled rental revenue and deferred revenue at the end of reporting periods so rental revenue is appropriately stated in the periods presented in accordance with generally accepted accounting principles in the United States of America.

During the preparation of the financial statements for the year ended December 31, 2002, we discovered certain errors related to the unbilled rental revenue and deferred revenue balance sheet accounts, and to the timing of when rental revenue was recorded in the past. On a cumulative basis, as of December 31, 2001, we had recognized approximately \$1.2 million of after-tax rental revenue that should be recognized in subsequent periods. Of the \$1.2 million, approximately \$0.9 million related to years ended December 31, 1999 or prior, and approximately \$0.3 million related to the year ended December 31, 2001. The impact of the errors was not material to the consolidated statement of operations for the year ended December 31, 2000.

The following table summarizes the effect of the restatement adjustments on our consolidated financial statements (in thousands):

	Previously Reported	Restated
<b>Year ended December 31, 2001</b>		
Revenues:		
Equipment rentals	\$ 99,229	\$ 98,696
Total revenues	306,191	309,517
Gross Profit:		
Equipment rentals	46,071	45,538
Total gross profit	75,756	77,918
Income from operations	23,115	22,582
Income before income taxes	5,276	4,743
Provision for income taxes	1,648	1,443
Net income	3,628	3,300
<b>As of December 31, 2001</b>		
Receivables, net of allowance for doubtful accounts	\$ 37,819	\$ 36,497
Total assets	288,451	287,129
Accrued expenses and other liabilities	5,264	5,904
Deferred income taxes	11,515	10,760
Total liabilities	257,345	257,230
Total members' deficit	(16,710)	(17,917)
Total liabilities and members' deficit	288,451	287,129
<b>As of December 31, 2000</b>		
Total members' deficit	\$ (68,098)	\$ (68,977)
<b>As of December 31, 1999</b>		
Total members' deficit	\$ (54,324)	\$ (55,203)

## Combination of H&E and ICM

H&E Equipment Services was formed through the combination of H&E and ICM, which were two leading, regional, integrated equipment rental, service and sales companies operating in contiguous geographical markets. In connection with the combination of H&E and ICM, H&E and ICM were merged with and into Gulf Wide, the parent of H&E, which was renamed H&E Equipment Services L.L.C. H&E, founded in 1961, is located in the Gulf Coast region and operated 26 facilities, most of which were full-service, in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina and Texas. ICM, founded in 1971,

operated in the fast-growing Intermountain region, and operated 19 facilities, most of which were full-service, in Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Texas and Utah.

**Year ended December 31, 2002 compared to year ended December 31, 2001**

**Total revenues.** Total revenues for fiscal year 2002 were \$351.7 million compared to \$309.5 million for fiscal year ended 2001. Included in the increase is \$93.8 million of revenues contributed by the locations associated with the ICM acquisition. The revenues during these periods were attributable to the following sources:

**Equipment Rental Revenues.** Total revenues from equipment rentals increased \$37.9 million, or 38.4%, to \$136.6 million for the year ended December 31, 2002 from \$98.7 million for the year ended December 31, 2001. Included in the increase is \$40.1 million of equipment rental revenues contributed by rental locations associated with the ICM acquisition. Rental revenues, excluding revenues from the ICM locations, decreased \$2.2 million for the year ended December 31, 2002 compared to 2001. Total

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crane rental revenue for the year ended December 31, 2002 declined \$3.6 million compared to the same period last year due primarily to the weakening of the industrial construction market. The decline in crane equipment rental revenue was offset by an increase of \$2.1 million in aerial equipment rental revenue and a \$1.7 million increase in other equipment rental volume.

**Equipment Sales Revenues.** Revenues from new equipment sales decreased \$12.0 million, or 14.3% to \$72.1 million for the year ended December 31, 2002 from \$84.1 million for the year ended December 31, 2001. Total new equipment sales attributable to the acquisition of ICM were \$19.2 million. The remaining \$31.2 million decline in new equipment sales for the year ended December 31, 2002 compared to the year ended December 31, 2001 is attributable primarily to a \$34.8 million decline in new crane sales. Sales of new earthmoving equipment increased \$1.6 million and sales of other miscellaneous new equipment decreased \$1.6 million while the sales of new aerial equipment increased \$3.6 million. The increase in new aerial equipment sales is primarily from the sales of equipment to be used by contractors in the building of power plants.

Revenues from used equipment sales decreased \$6.9 million, or 11.6% to \$52.5 million for the year ended December 31, 2002 from \$59.4 million for the year ended December 31, 2001. Total used equipment sales attributable to the acquisition of ICM were \$13.5 million. The remaining \$20.4 million decrease was attributable primarily to lower crane sales, which declined \$17.8 million due to lower customer demand. Sales of used aerial equipment increased \$2.3 million. Earthmoving and other equipment sales also decreased by \$4.9 million due to lower customer demand and the completion of the fleet rationalization program that took place during 2001.

The overall decline in both new and used equipment sales is a result of significant customer declines in capital expenditures given the uncertainties in the economy throughout the year.

**Parts and Service Revenues.** Revenues from parts sales and service revenues increased \$18.7 million, or 33.2% to \$75.0 million for the year ended December 31, 2002 from \$56.3 million for the year ended December 31, 2001. Total parts sales and service revenues attributable to the acquisition of ICM were \$17.6 million. The remainder of the increase was attributable to growth in revenues from parts sales, which increased \$0.9 million or 2.5%, due to increased parts sales related to the hi-lift operations, and growth in service revenues, which increased \$0.2 million, or 1.0%, as a result of an increase in the number of transactions and an increase in charge out rates throughout the year.

**Other Revenues.** Other revenues consisted primarily of billings to customers for equipment support activities including primarily transportation, hauling, parts freight, and damage waiver charges. Other revenues for the year ended December 31, 2002 increased \$4.5 million, or 41.3% to \$15.5 million from \$11.0 million for the year ended December 31, 2001. The acquisition of ICM accounted for \$3.4 million of the total increase. The remaining \$1.1 million increase was primarily attributable to related growth in billing transportation activities and damage waiver charges among other things.

**Total Gross Profit.** Total gross profit for the year ended December 31, 2002 was \$96.5 million compared to total gross profit of \$77.9 million for the year ended December 31, 2001. Total gross profit attributable to the acquisition of ICM was \$28.3 million. For the year ended December 31, 2002, gross profit contribution by segment as a percentage of total gross profit was 54.7% for equipment rentals, 6.3% for new equipment sales, 9.8% for used equipment sales and 30.6% for parts sales and service revenue and (1.4%) for other revenues.

**Equipment Rentals Gross Profit.** Gross profit from equipment rentals increased \$7.2 million to \$52.7 million for the year ended December 31, 2002 from \$45.5 million for the year ended December 31, 2001. Included in the increase is \$15.2 million of equipment rental gross profit generated by rental locations associated with the ICM acquisition. The remaining gross profit decreased \$8.0 million, or 17.6% for the year ended December 31, 2002 to \$37.5 million from \$45.5 million for the year ended December 31, 2001. The decline in equipment rental gross margin is primarily a result

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of downward pressures on aerial rental rates, slower economic activity, and higher total costs of rental operations in support of the growth in the hi-lift operations.

Total rental cost of revenues, excluding the effect of the ICM acquisition, increased \$6.2 million to \$59.4 million for the year ended December 31, 2002 from \$53.2 million for the year ended December 31, 2001. The increase is attributable to a \$3.2 million increase in depreciation due to the increase in hi-lift rental fleet equipment and a \$3.0 million increase in fleet repair costs. Certain hi-lift equipment is aging, exceeding the manufacturer warranty period and is now incurring repair and maintenance costs.

**Equipment Sales Gross Profit.** Gross profit from new equipment sales decreased \$0.6 million to \$6.1 million for the year ended December 31, 2002 from \$6.7 million for the year ended December 31, 2001. Total new equipment gross profit for the year ended December 31, 2002 included \$2.3 million associated with the acquisition of ICM Equipment. The remaining \$2.9 million decline in new equipment gross profit is a result of lower new equipment sales volume. Excluding the increase related to the ICM acquisition, gross margin on new equipment sales decreased to 8.9% for the year ended December 31, 2002 from 9.5%

for the year ended December 31, 2001. The decrease in new equipment gross margin was attributable to declining sales volume and gross margins across all product lines sold.

The gross profit from used equipment sales increased \$1.4 million to \$9.5 million for the year ended December 31, 2002 from \$8.1 million for the year ended December 31, 2001. Total used equipment gross profit for the year ended December 31, 2002 included \$3.1 million associated with the acquisition of ICM. The remaining \$1.7 million decrease in used equipment gross profit is a result of lower used equipment sales volume. Despite the dollar decline in gross profit, excluding the increase related to the ICM acquisition, gross margin on used equipment sales increased to 14.0% for the year ended December 31, 2002 from 11.4% for the year ended December 31, 2001. The improvement in gross profit margin is attributable to the mix of used equipment sold.

*Parts Sales and Service Revenues Gross Profit.* Gross profit from parts sales and service revenues increased \$8.4 million to \$29.5 million for the year ended December 31, 2002 from \$21.1 million for the year ended December 31, 2001. Total parts sales and service revenue gross profit for the year ended December 31, 2002 included \$8.3 million associated with the acquisition of ICM. The gross margin from parts sales and service revenues for the year ended December 31, 2002 decreased to 37.5% compared to 37.8% for the year ended December 31, 2001, excluding the effect of the ICM acquisition.

Excluding the effect of the ICM acquisition, gross profit from parts sales increased \$0.7 million and gross margin increased to 27.0% in 2002 from 25.9% in 2001. Excluding the effect of the ICM acquisition, gross profit from service revenues remained stable and gross margin from service revenues decreased to 57.8% from 59.0% due to increased costs of internal labor and material related to external service repair orders.

*Depreciation and Amortization.* Depreciation and amortization was \$49.5 million and \$32.2 million for fiscal years 2002 and 2001, respectively. The increase in depreciation and amortization expense was primarily attributable to the growth in rental fleet assets for the hi-lift operations and the acquisition of ICM's assets.

*Selling, General and Administrative Expenses.* Selling, general and administrative (SG&A) expenses were \$82.3 million, or 23.4% of total revenues for the year ended December 31, 2002 and \$55.4 million, or 17.9% of total revenues for the year ended December 31, 2001. Included in SG&A expense is \$22.1 million relating to the operations of ICM for the period subsequent to the acquisition. The remaining \$4.8 million increase in SG&A expense, year-over-year, is primarily due to the increased costs to support the significant expansion of the hi-lift operations initiated primarily in 2001.

*Income from Operations.* Based on the foregoing, income from operations decreased to \$14.2 million for the year ended December 31, 2002 from \$22.6 million for the year ended

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December 31, 2001. The \$8.4 million decrease was net of \$6.1 million of income from operations for ICM included for the period subsequent to the acquisition.

*Other Income (Expense).* Other expense increased by \$10.8 million to \$28.6 million for the year ended December 31, 2002 from \$17.8 million for the year ended December 31, 2001. Interest expense for the year ended December 31, 2002 increased \$11.0 million as a result of the refinancing of the Company's total debt and the acquisition of ICM. Additionally, annual interest rates on the revolving credit facility averaged 5.8% for the year ended December 31, 2002 compared to 7.3% for the year ended December 31, 2001.

*Income Tax Provision (Benefit).* H&E Equipment Services is a limited liability company that has elected to be treated as a C corporation for income tax purposes. Income taxes decreased by \$2.7 million to a benefit of \$1.3 million for the year ended December 31, 2002 from a provision of \$1.4 million for the year ended December 31, 2001. The change is a result of the Company incurring an \$14.3 million loss before income taxes in 2002 compared to income before income taxes in 2001. As of December 31, 2002, the Company has recorded a tax valuation allowance for its entire net deferred income tax assets. The valuation allowance was recorded given the cumulative losses incurred by the Company and the Company's belief that it is more likely than not that the Company will be unable to recover the net deferred income tax assets.

#### **Year ended December 31, 2001 compared to year ended December 31, 2000**

*Total Revenues.* Total revenues in fiscal year 2001 were \$309.5 million (restated), representing an increase of 31.9% (restated) over total revenues in fiscal year 2000 of \$234.6 million. The increase was attributable to the growth in equipment rentals, new and used equipment sales, parts sales and service revenues.

*Equipment Rental Revenues.* Revenues from equipment rentals increased \$28.1 million (restated), or 39.8% (restated), to \$98.7 million (restated) in fiscal year 2001 from \$70.6 million in fiscal year 2000. The increase was attributable to the growth in the rentals in the hi-lift operations, consisting of aerial work platform equipment. Hi-lift rentals increased by \$30.8 million, or 130.0%, to \$54.5 million in fiscal year 2001 from \$23.7 million in fiscal year 2000. Fiscal year 2001 was the first full year of operations for the hi-lift operations. Revenues from other equipment rentals decreased slightly to \$44.2 million in fiscal year 2001 from \$46.9 million in fiscal year 2000, due to the decrease in net capital expenditures in the previous year as a result of management's initiative to eliminate under-performing assets in order to improve utilization.

*Equipment Sales Revenues.* Revenues from new equipment sales increased \$30.8 million, or 57.8%, to \$84.1 million in fiscal year 2001 from \$53.3 million in fiscal year 2000. The increase was due primarily to a \$29.6 million increase in crane sales.

Revenues from used equipment sales increased \$8.0 million, or 15.6%, to \$59.4 million in fiscal year 2001 from \$51.4 million in fiscal year 2000. The increase was attributable in part to a \$13.3 million increase in crane sales, resulting from sales of under-performing assets from the rental fleet, partially offset by a \$3.0 million decrease in earthmoving equipment and a \$2.5 million decrease in aerial work platforms.

*Parts Sales and Service Revenues.* Revenues from parts sales and service revenues increased by \$5.3 million, or 10.4%, to \$56.3 million in fiscal year 2001 from \$51.0 million in fiscal year 2000. The increase was attributable to growth in parts revenues of \$2.1 million, or 6.1%, resulting from increased volume of parts sales transactions. The increase was also attributable to growth in service revenues which increased by \$3.2 million, or 19.3%, as a result of an increase in the number of service transactions to support the growth of the hi-lift and core divisions, as well as an increase from average service charge-out rates.

*Other Revenues.* Revenues from other sales activities consisted primarily of billings to customers for equipment support activities including transportation, hauling, parts freight and damage-waiver charges. Other revenues increased \$2.7 million, or 32.9%, to \$10.9 million in fiscal year 2001 as compared to \$8.2 million in fiscal year 2000. The increase was primarily attributable to growth in the transportation and hauling activities to support the growth of the hi-lift rental operations.

*Total Gross Profit.* Total gross profit in fiscal year 2001 was \$77.9 million (restated), representing an increase of 33.6% (restated) over total gross profit in fiscal year 2000 of \$58.3 million. Total gross margin increased to 25.2% (restated) in fiscal year 2001 from 24.9% in fiscal year 2000.

*Equipment Rentals Gross Profit.* Gross profit from equipment rentals increased \$14.4 million (restated) to \$45.5 million in fiscal year 2001 from \$31.1 million in fiscal year 2000. Gross margin on equipment rentals increased to 46.1% (restated) in fiscal year 2001 from 44.1% in fiscal year 2000. The increase in gross profit was primarily attributable to the growth in the hi-lift rental operations in 2001. The increase in gross margin was attributable to a more favorable mix of rental equipment following the elimination of lower performing assets in 2000.

*Equipment Sales Gross Profit.* Gross profit from new equipment sales increased \$1.3 million to \$6.7 million in fiscal year 2001 from \$5.4 million in fiscal year 2000. Gross margin on new equipment sales declined to 8.0% in fiscal year 2001 from 10.1% in fiscal year 2000. The increase in gross profit reflected the growth in new crane sales in 2001. The decline in gross margin was primarily attributable to lower margins from crane sales containing volume-based discounts in 2001.

Gross profit from used equipment sales increased \$1.1 million to \$8.1 million in fiscal year 2001 from \$7.0 million in fiscal year 2000. Gross margin on used equipment sales remained relatively unchanged at 13.6% in fiscal year 2001 compared to 13.6% in fiscal year 2000. The increase in gross profit reflected the increase in crane sales, offset by decreases in earthmoving and aerial work platform equipment sales.

*Parts Sales and Service Revenues Gross Profit.* Gross profit from parts sales and service revenues increased \$3.1 million to \$21.1 million in fiscal year 2001 from \$18.0 million in fiscal year 2000. Gross margin on parts sales and service revenues increased to 37.5% in fiscal year 2001 from 35.3% in fiscal year 2000. Gross profit from parts sales increased by \$0.9 million and gross margin from parts sales increased to 25.8% from 25.0%. The increase was due to increased pricing on outsourced parts. Gross profit for service revenues increased by \$2.3 million and gross margin from service revenues increased to 59.1% from 56.6%. The increase was due to growth in the hi-lift operations in 2001 and also reflected the growth in service charge-out rates during 2001 over 2000 levels. The increase in gross margin was attributable to the increase in higher margin service revenues in 2001.

*Depreciation and Amortization.* Depreciation and amortization was \$32.2 million and \$30.5 million for fiscal years 2001 and 2000, respectively. The increase in depreciation and amortization expense was primarily attributable to the growth in rental fleet assets for the hi-lift operations.

*Selling, General and Administrative Expenses.* Selling, general and administrative ("SG&A") expenses were \$55.4 million, or 17.9% of total revenues, during fiscal year 2001 and \$46.0 million, or 19.6% of total revenues, in fiscal year 2000. The increase in SG&A expenses was attributable to fiscal year 2001 being the first full year of hi-lift operations. The decrease in SG&A expenses as a percentage of total revenues was due to volume growth in crane equipment sales revenues.

*Income from Operations.* Based on the foregoing, income from operations increased 83.7% (restated) to \$22.6 million (restated) in fiscal year 2001 from \$12.3 million in fiscal year 2000.

*Other Income (Expense).* Other expense decreased by \$4.9 million to \$17.8 million in fiscal year 2001 from \$22.7 million in fiscal year 2000. The decrease was due to a \$4.9 million decrease in interest expense from fiscal year 2000 to 2001. Fiscal year 2000 included \$1.3 million of interest expense related to a beneficial conversion feature recorded in 1999 in connection with the 12% Convertible

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Subordinated Notes due 2005. These notes were converted to equity as part of the recapitalization of H&E in August 2001.

*Income Tax Provision (Benefit).* H&E Equipment Services is a limited liability company that has elected to be treated as a C corporation for income tax purposes. Income tax provision increased from a tax benefit of \$3.1 million in fiscal year 2000 to a \$1.4 million (restated) tax provision in fiscal year 2001. The effective tax rate was relatively unchanged between the fiscal years.

## **Liquidity and Capital Resources**

*Cash flow from operating activities.* For the year ended December 31, 2002, cash provided by operations was \$19.7 million. The significant components of operating activities that provided cash were total property and equipment and rental fleet depreciation expense of \$49.4 million and an increase in accounts payable and accrued expenses of \$10.9 million. Significant components of operating activities that used cash consisted of \$13.1 million net loss, \$1.3 million for deferred taxes, gain on sale of both rental and non-rental equipment of \$6.4 million, an increase in accounts receivable of \$3.1 million, and an increase in inventories of \$21.3 million. The remaining \$4.6 million of cash provided by operating activities related to the change in other assets and other liabilities.

*Cash flow from investing activities.* For the year ended December 31, 2002, cash used in investing activities was \$13.0 million. This is a result of purchasing \$50.5 million in rental and non-rental equipment. The proceeds from the sale of rental and non-rental equipment was \$33.7 million. Cash acquired in the business combination was \$3.6 million.

*Cash flow from financing activities.* For the year ended December 31, 2002, cash used in financing activities was \$7.5 million. For the year, total borrowings on the senior secured credit facility were \$436.1 million (including an initial borrowing of \$83.0 million on June 17, 2002) and total payments on the senior secured credit facility were \$658.5 million. On June 17, 2002, \$304.4 million was a repayment on the balance outstanding on both the ICM Equipment and H&E Equipment Service's previous lines of credit. Proceeds from the issuance of the senior secured notes were \$198.5 million and proceeds from the issuance of the senior subordinated notes were \$50.0 million. Financing costs paid in cash for the refinancing totaled \$13.5 million. Payments on capital leases and other notes were \$6.8 million. H&E Equipment Services paid \$13.3 million to members for outstanding obligations assumed in connection with the merger.

As of March 31, 2003, the total balance outstanding on the senior secured credit facility was \$77.9 million with \$67.4 million available in additional borrowings net of \$4.7 million in standby letters of credit. Also at March 31, 2003, the total balance payable on capital lease obligations and notes payable were

\$9.7 million and \$1.3 million, respectively.

On March 31, 2003, the senior secured credit facility was amended to extend the current year's requirement for filing the Company's audited financial statements to the earlier of April 15, 2003, or the date the Company files its annual report on Form 10-K with the Securities and Exchange Commission.

## Liquidity

Our operating cash requirements consist principally of working capital requirements, scheduled payments of principal and interest on outstanding indebtedness and capital expenditures.

We used the net proceeds from the offering of senior subordinated and senior secured notes and borrowings under our senior secured credit facility to consummate the combination of H&E and ICM, repay the existing indebtedness of H&E and ICM, pay certain obligations and pay related fees and expenses. The senior secured credit facility provides for borrowings in an aggregate principal amount not to exceed \$150.0 million, consisting of revolving loans and swing line loans. As of December 31, 2002, we had approximately \$76.7 million in indebtedness outstanding under the senior secured credit facility and \$72.8 million of borrowing availability. We also had \$0.5 million of outstanding letters of credit as of December 31, 2002.

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To service our debt, we will require a significant amount of cash. Our ability to pay interest and principal on our indebtedness (including the senior subordinated and senior secured notes and obligations under the senior secured credit facility) and to satisfy our other debt obligations will depend upon our future operating performance and the availability of refinancing indebtedness, which will be affected by prevailing economic conditions and financial, business and other factors, some of which are beyond our control. Based on our current level of operations and anticipated cost savings and operating improvements, we believe our cash flow from operations, available cash and available borrowing under the senior secured credit facility will be adequate to meet our future liquidity needs for at least the next twelve months.

We cannot assure that our future cash flow will be sufficient to meet our obligations and commitments. If we are unable to generate sufficient cash flow from operations in the future to service our indebtedness and to meet our other commitments, we will be required to adopt one or more alternatives, such as refinancing or restructuring our indebtedness, selling material assets or operations or seeking to raise additional debt or equity capital. We cannot assure that any of these actions could be effected on a timely basis or on satisfactory terms or at all, or that these actions would enable us to continue to satisfy our capital requirements. In addition, our existing or future debt agreements, including the indenture and the senior secured credit facility, may contain restrictive covenants prohibiting us from adopting any of these alternatives. Our failure to comply with these covenants could result in an event of default which, if not cured or waived, could result in the acceleration of all of our debts.

The senior secured credit facility contains the following financial covenants, each of which is to be calculated in accordance with generally accepted accounting principles consistently applied:

- Maximum Senior Debt to Tangible Asset Ratio as of the last day of each fiscal quarter of not more than 1.10 to 1.00 for such fiscal quarter.
- Maximum Leverage Ratio as of the last day of each fiscal quarter and for the 12-month period then ended of not more than 4.60 to 1.00 for each fiscal quarter ending on or prior to December 31, 2004; and 4.25 to 1.00 for each fiscal quarter ending after that date.
- Maximum Adjusted Leverage Ratio as of the last day of each fiscal quarter and for the 12-month period then ended of not more than 4.60 to 1.00 for each fiscal quarter ending on or prior to December 31, 2004; and 4.40 to 1.00 for each fiscal quarter ending after that date.
- Minimum Utilization Rate of Equipment Inventory Ratio for the 12-month period at the end of each fiscal quarter of not less than 28% for such fiscal quarter.
- Minimum Adjusted Interest Coverage Ratio for the 12-month period at the end of each fiscal quarter of not less than 1.45 to 1.00 for each fiscal quarter ending on or prior to March 31, 2004; 1.50 to 1.00 for each fiscal quarter ending on or after June 30, 2004 and on or prior to December 31, 2004; and 1.60 to 1.00 for each fiscal quarter ending after December 31, 2004.
- Maximum P&E Capital Expenditures not to exceed in the aggregate \$5.0 million for any fiscal year.

*Off-Balance Sheet Arrangements.* At December 31, 2002, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We are, therefore, not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

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## Contractual and Commercial Commitments Summary

The following summarizes our contractual obligations at December 31, 2002, and the effect such obligations are expected to have on our liquidity and cash flow in future periods.

	Payments Due by Year				
	Total	2003	2004-2005	2006-2007	Thereafter
	(Dollars in thousands)				
Long-term debt (including subordinated notes payable and	\$ 242,574	\$ 348	\$ 593	\$ 365	\$ 241,268



amounts due to members)					
Interest payments on senior secured notes	222,376	22,250	44,500	44,500	111,126
Interest payments on senior subordinated notes	72,838	6,625	13,250	13,250	39,713
Senior secured credit facility	76,724	—	—	—	76,724
Capital lease obligations	10,841	8,421	2,420	—	—
Operating leases <sup>(1)</sup>	100,426	29,366	39,758	21,367	9,935
Other long-term obligations <sup>(2)</sup>	63,315	17,717	24,078	21,220	300
Total contractual cash obligations	\$ 789,094	\$ 84,727	\$ 124,599	\$ 100,702	\$ 479,066

(1) This includes total operating lease rental payments (including interest) having initial or remaining non-cancelable lease terms longer than one year.

(2) This includes: (i) Bruckmann, Rosser, Sherrill & Co., Inc's annual management fees through 2007 (based upon the lesser of 1.75% of estimated Earnings Before Interest, Taxes, Depreciation, and Amortization excluding operating lease expense or \$2.0 million per year) for \$6.2 million; (ii) Thomas R. Engquist management fees (7 years) for \$1.8 million; (iii) Coastal Equipment management consulting fee (2 years) for \$0.2 million; (iv) payments for secured floor plan financing for \$55.1 million.

Additionally, we have a stand by letter of credit for \$0.5 million that expires in 2003.

## Recent Accounting Pronouncements

We adopted the provisions of Statement of Financial Accounting Standards ("SFAS") No. 142, "Goodwill and Other Intangible Assets" effective January 1, 2002. The provisions of SFAS No. 142 eliminate the amortization of goodwill and certain intangible assets that are deemed to have indefinite lives and require such assets to be tested for impairment and to be written down to fair value, if necessary. Accordingly, we do not have goodwill amortization subsequent to December 31, 2001.

In connection with the adoption of SFAS No. 142, we made an assessment of our goodwill for impairment based upon the new rules during the quarter ended June 30, 2002. Based on the assessment, it does not appear that we will be required to adjust the carrying value of our goodwill. As of December 31, 2002, we had goodwill of approximately \$3.2 million.

In June 2001, the FASB released SFAS No. 143, "Accounting for Asset Retirement Obligations." This statement addresses the accounting treatment for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. The provisions of the statement apply to legal obligations associated with the retirement of long-lived assets that result from the acquisition, construction, development, or normal operation of a long-lived asset. The statement is effective for financial statements issued for fiscal years beginning after June 15, 2002. We will adopt the provisions of SFAS No. 143 during 2003, but do not expect this statement to have a material impact on our consolidated operations or financial position.

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets". This standard addresses financial accounting and reporting for the impairment or disposal of long-lived assets and supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of". We adopted SFAS No. 144 on January 1, 2002. The adoption of SFAS No. 144 did not have a material effect on our consolidated financial position or results of operations.

In July 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." Under SFAS No. 146, a company will record a liability for a cost associated with an exit or disposal activity when that liability is incurred and can be measured at fair value. A liability is incurred when an event obligates the entity to transfer or use assets (i.e., when an event leaves the company little or no discretion to avoid transferring or using the assets in the future). Under previous accounting rules, if a company's management approved an exit plan, the company generally could record the costs of that plan as a liability on the approval date, even if the company did not incur the costs until a later date. Under SFAS No. 146, some of those costs might qualify for immediate recognition, others might be recorded during one or more quarters, and still others might not be recorded until incurred in a much later period. We are currently reviewing the standard, which is effective for periods beginning after December 31, 2002, applied prospectively, and do not expect it to have a material impact on our results of operations or financial position.

In November 2002, the FASB issued Interpretation No. 45 ("FIN No. 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" which expands previously issued accounting guidance and disclosure requirements for certain guarantees. FIN 45 requires recognition of an initial liability for the fair value of an obligation assumed by issuing a guarantee. Guarantees are required to be disclosed in the notes to the financial statements starting with the period ending after December 15, 2002. For certain guarantees issued after December 31, 2002, the fair value of the obligation must be reported on the balance sheet. We adopted the disclosure requirements. We do not expect the adoption of the accounting provisions of FIN No. 45 to have a material impact on our results of operations and financial position.

In January 2003, the FASB issued Financial Interpretation No. 46 ("FIN No. 46"), "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51," which addresses the consolidation by business enterprises of variable interest entities as defined therein and applies immediately to variable interests in variable interest entities created or obtained after January 31, 2003. We do not expect the adoption of FIN No. 46 to have a material impact on our results of operations and financial position.

## Seasonality

Our business is seasonal with demand for our rental equipment tending to be lower in the winter months. The equipment rental activities are directly related to commercial and industrial construction and maintenance activities. Therefore, equipment rental will be correlated to the levels of active construction activities. The severity of weather conditions can have a temporary impact on the level of construction activities.

Equipment sales cycles are also subject to seasonality with peak selling period during spring season and expending through summer. Parts and service activities are less affected by changes in demand caused by seasonality.

## **Inflation**

Although we cannot accurately anticipate the effect of inflation on our operations, we believe that inflation has not had, and is not likely in the foreseeable future to have, a material impact on our results of operations.

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

Our earnings are effected by changes in interest rates due to the fact that interest on the senior secured credit facility is calculated based upon LIBOR plus 300 basis points. We are also required to pay the lenders a commitment fee equal to 0.5% per annum in respect of undrawn commitments under the senior secured credit facility. At December 31, 2002, and as a result of the refinancing we had variable rate debt representing 23.3% of total debt. A portion of our indebtedness bears interest at variable rates that are linked to changing market interest rates. Based upon the balances outstanding at December 31, 2002, a one percent increase in market rates would increase our annual interest expense approximately \$0.8 million. We do not have significant exposure to the changing interest rates on our fixed-rate senior secured notes, senior subordinated notes or the capital lease obligations, which represented 76.7% of total debt.

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

### **Independent Auditors' Report**

The Board of Directors and Members  
H&E Equipment Services L.L.C.:

We have audited the accompanying consolidated balance sheets of H&E Equipment Services L.L.C. and subsidiaries as of December 31, 2002 and 2001, and the related consolidated statements of operations, members' equity (deficit) and cash flows for the years then ended. In connection with our audits, we also have audited the 2002 and 2001 consolidated financial statement schedules listed in Item 15.(a)2. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

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

In our opinion, the 2002 and 2001 consolidated financial statements referred to above present fairly, in all material respects, the financial position of H&E Equipment Services L.L.C. and subsidiaries as of December 31, 2002 and 2001, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the related consolidated financial statement schedule for the years ended December 31, 2002 and 2001, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

As discussed in Note 20 to the accompanying consolidated financial statements, the Company has restated the consolidated balance sheet as of December 31, 2001, and the related consolidated statements of operations, members' equity (deficit) and cash flows for the year then ended.

As discussed in Note 2 to the consolidated financial statements, the Company adopted Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" in the year ended December 31, 2002.

/s/ KPMG LLP

Salt Lake City, Utah  
April 7, 2003

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### **Independent Auditor's Report**

To the Members  
H&E Equipment Services L.L.C.  
Baton Rouge, Louisiana

We have audited the accompanying consolidated statements of operations, members' equity (deficit) and cash flows of H&E Equipment Services, L.L.C. (Formerly Gulf Wide Industries, L.L.C.) and Subsidiary, Baton Rouge, Louisiana, for the year ended December 31, 2000. In connection with our audit we also have audited the 2000 consolidated financial statement schedule listed in Item 15.(a)2: These consolidated financial statements and the financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and the financial statement schedule based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant

estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated results of operations and cash flows of H&E Equipment Services, L.L.C.(Formerly Gulf Wide Industries, L.L.C.) and Subsidiary, for the year ended December 31, 2000, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the related consolidated financial statement schedule for the year ended December 31, 2000, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Note 20 to the accompanying consolidated financial statements, the Company has restated the consolidated statements of members' equity (deficit) and cash flows for the year ended December 31, 2000.

Yours truly,  
/s/ Hawthorn, Waymouth & Carroll, L.L.P.  
Baton Rouge, Louisiana

February 21, 2001  
(except for Note 20 as  
to which the date is April 7, 2003)

**H&E EQUIPMENT SERVICES L.L.C.**  
**CONSOLIDATED BALANCE SHEETS**  
**AS OF DECEMBER 31, 2002 and 2001**  
**(Dollars in thousands, except share amounts)**

Assets	2002	2001
		(Restated—See Note 20)
Cash	\$ 3,398	\$ 4,322
Receivables, net of allowance for doubtful accounts of \$3,609 and \$708, respectively	65,145	36,497
Inventories	53,462	31,645
Prepaid expenses and other assets	1,945	2,316
Rental equipment, net of accumulated depreciation of \$80,102 and \$58,805, respectively	309,697	195,701
Property and equipment, net of accumulated depreciation and amortization of \$13,338 and \$8,673, respectively	19,156	13,444
Deferred financing costs, net of accumulated amortization of \$854	12,612	—
Goodwill	3,204	3,204
	\$ 468,619	\$ 287,129
<b>Liabilities and Members' Equity (Deficit)</b>		
<b>Liabilities:</b>		
Senior secured credit facility	\$ 76,724	\$ 181,714
Accounts payable	91,488	44,234
Accrued expenses and other liabilities	12,329	5,904
Notes payable	1,402	3,424
Senior secured notes, net of discount	198,570	—
Senior subordinated notes, net of discount	42,602	—
Capital lease obligations	10,841	11,194
Deferred compensation	10,233	—
Deferred income taxes	—	10,760
	444,189	257,230
Senior Exchangeable Preferred Units	—	10,392
Senior Subordinated Preferred Units	—	37,424
Commitments and contingencies (Note 15)		
<b>Members' equity (deficit):</b>		
Series A Senior Preferred Units, \$1 par value. Liquidation value \$1,293. Authorized, issued and outstanding 1,235,299 shares	—	1,235
Junior Preferred Units, \$1 par value. Liquidation value \$5,157. Authorized, issued and outstanding 5,000 shares	—	5,000

Class A Common Stock, \$.01 par value. Authorized, issued and outstanding 115,152.8 shares	—	1,152
Class B Common Stock, \$.01 par value. Authorized, issued and outstanding 115,152.8 shares	—	1,152
Additional paid-in-capital	—	50,090
Accumulated deficit	—	(76,546)
Member's interest	24,430	—
	<u>24,430</u>	<u>—</u>
Total members' equity (deficit)	24,430	(17,917)
	<u>24,430</u>	<u>(17,917)</u>
Total liabilities and members' equity (deficit)	\$ 468,619	\$ 287,129
	<u>\$ 468,619</u>	<u>\$ 287,129</u>

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

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**H&E EQUIPMENT SERVICES L.L.C.**

**CONSOLIDATED STATEMENTS OF OPERATIONS**

**FOR THE YEARS ENDED DECEMBER 31, 2002, 2001 and 2000**

**(Dollars in thousands)**

	<u>2002</u>	<u>2001</u>	<u>2000</u>
		(Restated—See Note 20)	
<b>Revenues:</b>			
Equipment rentals	\$ 136,624	\$ 98,696	\$ 70,625
New equipment sales	72,143	84,138	53,345
Used equipment sales	52,487	59,441	51,402
Parts sales	47,218	36,524	34,435
Service revenues	27,755	19,793	16,553
Other	15,473	10,925	8,236
	<u>351,700</u>	<u>309,517</u>	<u>234,596</u>
<b>Cost of Revenues:</b>			
Rental depreciation	46,471	30,004	28,629
Rental expense	37,408	23,154	10,916
New equipment sales	66,055	77,442	47,910
Used equipment sales	43,026	51,378	44,401
Parts sales	34,011	27,076	25,846
Service revenues	11,438	8,106	7,139
Other	16,813	14,439	11,488
	<u>255,222</u>	<u>231,599</u>	<u>176,329</u>
Gross profit	96,478	77,918	58,267
Selling, general and administrative expenses	82,294	55,382	46,001
Gain on sale of property and equipment	59	46	—
	<u>14,243</u>	<u>22,582</u>	<u>12,266</u>
Income from operations	14,243	22,582	12,266
	<u>14,243</u>	<u>22,582</u>	<u>12,266</u>
<b>Other income (expense)</b>			
Interest expense	(28,955)	(17,995)	(22,909)
Other, net	372	156	187
	<u>(28,583)</u>	<u>(17,839)</u>	<u>(22,722)</u>
Total other expense	(28,583)	(17,839)	(22,722)
	<u>(28,583)</u>	<u>(17,839)</u>	<u>(22,722)</u>
Income (loss) before income taxes	(14,340)	4,743	(10,456)
Income tax provision (benefit)	(1,271)	1,443	(3,123)
	<u>(13,069)</u>	<u>3,300</u>	<u>(7,333)</u>
Net income (loss)	\$ (13,069)	\$ 3,300	\$ (7,333)
	<u>\$ (13,069)</u>	<u>\$ 3,300</u>	<u>\$ (7,333)</u>

## H&amp;E EQUIPMENT SERVICES, L.L.C.

## CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY (DEFICIT)

FOR THE YEARS ENDED DECEMBER 31, 2002, 2001 and 2000

(Dollars in thousands)

	Series A Senior Preferred	Junior Preferred	Class A Common	Class B Common	Additional Paid-in- Capital	Accumulated Deficit	Member's Interest	Total Members' Equity (Deficit)
December 31, 1999 (as previously reported)	\$ —	\$ —	\$ 1,961	\$ —	\$ 3,000	\$ (59,285)	\$ —	\$ (54,324)
Prior period adjustments	—	—	—	—	—	(879)	—	(879)
December 31, 1999 (restated)	—	—	1,961	—	3,000	(60,164)	—	(55,203)
Net loss	—	—	—	—	—	(7,333)	—	(7,333)
Accretion of liquidation value on Preferred Units outside of equity	—	—	—	—	—	(6,441)	—	(6,441)
December 31, 2000 (restated)	—	—	1,961	—	3,000	(73,938)	—	(68,977)
Net income (restated)	—	—	—	—	—	3,300	—	3,300
Accretion of liquidation value on Preferred Units outside of equity	—	—	—	—	—	(4,379)	—	(4,379)
Recapitalization and issuance of new securities	1,235	5,000	(809)	1,152	47,090	—	—	53,668
Accretion of liquidation value on Preferred Units outside of equity	—	—	—	—	—	(1,529)	—	(1,529)
December 31, 2001 (restated)	1,235	5,000	1,152	1,152	50,090	(76,546)	—	(17,917)
Net loss—January 1, 2002 to June 17, 2002	—	—	—	—	—	(2,365)	—	(2,365)
Accretion of liquidation value on Preferred Units outside of equity through June 17, 2002	—	—	—	—	—	(1,009)	—	(1,009)
Members' equity issued with Senior Subordinated Notes at June 17, 2002	—	—	—	—	—	—	7,600	7,600
Conversion of Senior Exchangeable Preferred Units at June 17, 2002	—	—	—	—	—	—	10,652	10,652
Conversion of Senior Subordinated Preferred Units at June 17, 2002	—	—	—	—	—	—	38,173	38,173
Conversion of series A Senior Preferred, Junior Preferred, Class A Common, Class B Common, Additional-Paid-In Capital and accumulated deficit to member's equity at June 17, 2002	(1,235)	(5,000)	(1,152)	(1,152)	(50,090)	79,920	(21,291)	—
Net loss—June 18, 2002 to December 31, 2002	—	—	—	—	—	—	(10,704)	(10,704)
December 31, 2002	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 24,430	\$ 24,430

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

H&E EQUIPMENT SERVICES L.L.C.

CONSOLIDATED STATEMENTS OF CASH FLOWS

FOR THE YEARS ENDED DECEMBER 31, 2002, 2001 and 2000

(Dollars in thousands)

	Years Ended December 31,		
	2002	2001	2000
		(Restated— See Note 20)	(Restated— See Note 20)
<b>Cash Flows from operating activities:</b>			
Net income (loss)	\$ (13,069)	\$ 3,300	\$ (7,333)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation on property and equipment	3,020	1,909	1,668
Depreciation on rental equipment	46,471	30,004	28,629
Amortization of loan discounts and deferred financing costs	1,091	—	—
Amortization of goodwill	—	250	244
Amortization of beneficial conversion feature	—	—	1,250
Provision for losses on accounts receivable	1,517	556	708
Gain on sale of property and equipment	(59)	(46)	—
Gain on sale of rental equipment	(6,326)	(7,431)	(5,961)
Deferred income taxes	(1,306)	1,799	(3,115)
Changes in operating assets and liabilities, net of business combination:			
Receivables, net	(3,145)	1,734	(13,003)
Inventories	(21,337)	(2,632)	(16,028)
Prepaid expenses and other assets	1,433	(1,882)	747
Accounts payable	9,434	(366)	(7,501)
Accrued expenses and other liabilities	1,460	2,920	5,107
Deferred compensation	490	—	—
Net cash provided by (used in) operating activities	19,674	30,115	(14,588)
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(3,821)	(3,251)	(2,331)
Purchases of rental equipment	(46,724)	(78,313)	(25,639)
Proceeds from sale of property and equipment	115	148	7
Proceeds from sale of rental equipment	33,738	43,570	44,471
Cash acquired in ICM business combination	3,643	—	—
Purchase of Coastal Equipment, net of cash acquired	—	—	(256)
Net cash (used in) provided by investing activities	(13,049)	(37,846)	16,252
<b>Cash flows from financing activities:</b>			
Net proceeds from issuance of senior secured notes	198,526	—	—
Net proceeds from issuance of senior subordinated notes	50,009	—	—
Payments of amounts due to members	(13,347)	—	—
Proceeds from issuance of senior exchangeable preferred units	—	10,000	—
Payment of deferred financing costs	(13,466)	—	—
Borrowings on senior secured credit facility	436,081	316,933	221,803
Payments on senior secured credit facility	(658,489)	(312,242)	(223,627)
Principal payments on notes payable	(2,022)	(653)	(888)
Payments on capital lease obligations	(4,841)	(3,612)	—
Net cash (used in) provided by financing activities	(7,549)	10,426	(2,712)
Net (decrease) increase in cash	(924)	2,695	(1,048)
Cash, beginning of year	4,322	1,627	2,675
Cash, end of year	\$ 3,398	\$ 4,322	\$ 1,627

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

	Years Ended December 31,		
	2002	2001	2000
<b>Supplemental schedule of noncash investing and financing activities:</b>			
Noncash asset purchases:			
New and used equipment financed	\$ —	\$ 6,205	\$ —
Rental equipment financed under capital lease obligations	4,182	14,806	—
New inventory financed	—	2,077	—
Assets transferred from new and used inventory to rental fleet	11,602	15,291	20,709
Members' equity issued with the senior subordinated notes	7,600	—	—
Conversion of debt to equity under a recapitalization agreement	—	44,202	—
<b>Supplement disclosures of cash flow information:</b>			
Cash paid during the year for:			
Interest	\$ 28,662	\$ 14,781	\$ 17,937
Income taxes	6	125	—

### Supplemental Disclosures of Non-Cash Investing and Financing Activities:

As of December 31, 2002 and 2001, the Company had \$55.1 million and \$30.0 million, respectively, in flooring plans payable outstanding, which were used to finance purchases of inventory and rental equipment.

On June 17, 2002, the Company entered into a business combination acquiring substantially all the assets and assuming certain liabilities of ICM Equipment Company L.L.C. The following table sets forth information relating to the acquisition (in thousands):

Fair value of assets acquired	\$ 187,781
Excess of liabilities assumed over fair value of assets acquired	—
Liabilities assumed	\$ 187,781

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

## H&E EQUIPMENT SERVICES L.L.C.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### (1) ORGANIZATION AND NATURE OF OPERATIONS

##### Basis of Presentation

H&E Equipment Services L.L.C. (H&E Equipment Services) is a wholly-owned subsidiary of H&E Holdings L.L.C. (H&E Holdings). H&E Holdings is principally a holding company conducting all of its operations through H&E Equipment Services (see Note 3). The consolidated financial statements include the results of operations of H&E Equipment Services and its wholly-owned subsidiaries H&E Finance Corp., GNE Investments, Inc. and Great Northern Equipment, Inc., collectively referred to herein as the "Company".

The nature of the Company's business is such that short-term obligations are typically met by cash flows generated from long-term assets. Consequently, consistent with industry practice, the accompanying consolidated balance sheets are presented on an unclassified basis.

##### Nature of Operations

The Company is an integrated equipment rental, service and sales company located in the United States with an integrated network of 45 facilities, most of which have full service capabilities, and a workforce that includes a group of service technicians and a separate rental and equipment sales force. In addition to renting equipment, the Company also sells new and used equipment and provides extensive parts and service support. The Company generates a significant portion of its gross profit from parts sales and service revenues.

The Company's operations are principally connected with construction and industrial activities. Consequently, a downturn in construction or industrial activity may lead to a decrease in the demand for equipment or depressed rental rates and sales prices of equipment. The Company has a substantial amount of debt. In accordance with the terms of the current debt agreements, the Company must comply with certain restrictive financial and operational covenants (see Note 13). Failure to comply with these covenants may adversely affect the Company's ability to finance future operations or capital needs or to engage in business activities.

#### (2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### Principles of Consolidation and Basis of Presentation

The accompanying consolidated financial statements include the accounts of H&E Equipment Services L.L.C. and its subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

### **Revenue Recognition**

The Company's policy is to recognize revenue from equipment rentals in the period earned, over the contract term, regardless of the timing of the billing to customers. A rental contract term can be daily, weekly or monthly. Because the term of the contracts can extend across financial reporting periods, we record unbilled rental revenue and deferred revenue at the end of reporting periods so rental revenue is appropriately stated in the periods presented. Revenue from the sale of equipment and parts is recognized at the time of delivery to, or pick-up by, the customer and when all obligations under the sales contract have been fulfilled and collectability is reasonably assured. Service revenues

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are recognized at the time the services are rendered. Other revenues consist primarily of billings to customers for rental equipment delivery and damage waiver charges.

### **Inventories**

New and used equipment is stated at the lower of cost or market by specific-identification. Parts and supplies are stated at the lower of the average cost or market.

### **Rental Equipment**

Rental equipment purchased by the Company is stated at cost and is depreciated over the estimated useful lives of the equipment using the straight-line method. The range of estimated useful lives for rental equipment depreciation is three to ten years, after giving effect to an estimated salvage value of 0% to 25% of cost.

Ordinary repair and maintenance costs and property taxes are charged to operations as incurred. Expenditures for additions or improvements that extend the useful life of the asset are capitalized in the period incurred. When rental equipment is sold or disposed of, the related cost and accumulated depreciation are removed from the respective accounts, and any gain or loss is included in the Company's consolidated results of operations.

### **Property and Equipment**

Property and equipment are recorded at cost and are depreciated over the estimated useful lives using the straight-line method. The range of estimated useful lives for property and equipment is three to ten years. Ordinary repair and maintenance costs are charged to operations as incurred. Leasehold improvements are amortized using the straight-line method over their estimated useful lives or the remaining life of the lease, whichever is shorter.

### **Long-lived Assets**

Long-lived assets are recorded at the lower of amortized cost or fair value. The Company reviews long-lived assets and certain identifiable intangibles for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset over the remaining useful life. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets.

### **Deferred Financing Costs and Initial Purchasers' Discounts**

Deferred financing costs and initial purchasers' discounts were recorded during 2002 in connection with entering into a new senior secured credit facility and issuing senior secured notes and senior subordinated notes (see Note 13). The amounts are being amortized over the terms of the loans and notes, utilizing the effective interest method. The amortization expense of deferred financing costs and initial purchasers' discounts is included with interest expense as an overall cost of the financing. During 2002, interest expense related to the amortization of these costs totaled \$1,091,000.

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### **Goodwill**

The \$3.2 million of goodwill recorded in the accompanying consolidated balance sheets was established in connection with an acquisition in 1999. Prior to the adoption of Statement of Financial Accounting Standards (SFAS) No. 142 on January 1, 2002, goodwill was being amortized over 40 years. Beginning January 1, 2002, goodwill is no longer being amortized, but will be tested on at least an annual basis for impairment. See "Recent Accounting Pronouncements" for further information.

### **Advertising**

Advertising costs are expensed as incurred and totaled \$993,000, \$763,000, and \$710,000 for the years ended December 31, 2002, 2001 and 2000, respectively.

### **Shipping and Handling Fees and Costs**

Shipping and handling fees billed to customers are recorded as revenues while the related shipping and handling costs are included in cost of revenues.

### **Income Taxes**



The Company files a consolidated federal income tax return with its wholly owned subsidiaries. As a Limited Liability Corporation, the Company has elected to be taxed as a C-Corporation under the provisions of the Internal Revenue Code ("IRC"). Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

### Fair Value of Financial Instruments

The carrying amounts reported in the accompanying consolidated balance sheets for accounts receivable, accounts payable, accrued liabilities, and deferred compensation approximate fair value due to the immediate to short-term maturity of these financial instruments. The carrying amount of the senior secured credit facility approximates the fair value due to the fact that the underlying instruments include provisions to adjust interest rates to approximate fair market value. The estimated fair value of

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the Company's notes payable, senior secured and senior subordinated notes payable at December 31, 2002 are as follows (in thousands):

	Carrying Amount	Fair Value
Senior secured notes with interest computed at 11 <sup>1</sup> / <sub>8</sub> %	\$ 198,570	\$ 156,000
Senior subordinated notes with interest computed at 12 <sup>1</sup> / <sub>2</sub> %	42,602	39,220
Notes payable to financial institution with interest rates ranging from 4.25% to 7.63%	1,018	759
Notes payable to suppliers with interest computed at 2.9%	304	266
Notes payable to finance companies with interest rates ranging from 9 <sup>1</sup> / <sub>2</sub> % to 10 <sup>1</sup> / <sub>2</sub> %	80	69
	<u>\$ 242,574</u>	<u>\$ 196,314</u>

### Concentrations of Credit and Supplier Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of trade accounts receivable. Credit risk with respect to trade accounts receivable is mitigated by the large number of geographically diverse customers and the Company's credit evaluation procedures. Although generally no collateral is required, when feasible, mechanics' liens are filed and personal guarantees are signed to protect the Company's interests. The Company maintains reserves for potential losses.

The Company records its trade receivables at sales value and establishes specific reserves for certain customer accounts identified as known collection problems due to insolvency, disputes or other collection issues. The amounts of the specific reserves are estimated by management based on the following assumptions and variables: customer's financial position, age of the customer's receivables and changes in payment schedules. In addition to the specific reserves, management establishes a non-specific allowance for doubtful accounts by applying specific percentages to the different receivable aging categories (excluding the specifically reserved accounts). The percentage applied against the aging categories increases as the accounts become further past due. The allowance for doubtful accounts is charged with the write-off of uncollectible customer accounts.

The Company routinely acquires equipment from certain suppliers. Management believes that other suppliers could provide similar equipment with comparable terms.

### 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. The use of estimates and assumptions may affect the amounts reported in the consolidated financial statements and accompanying notes. Significant estimates include allowance for doubtful accounts, useful lives for depreciation, goodwill and other asset impairments, loss contingencies, and fair values of financial instruments. Actual results could differ from those estimates.

### Recent Accounting Pronouncements

The Company adopted the provisions of SFAS No. 142, "Goodwill and Other Intangible Assets" effective January 1, 2002. The provisions of SFAS No. 142 eliminate the amortization of goodwill and

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certain intangible assets that are deemed to have indefinite lives and require such assets to be tested for impairment and to be written down to fair value, if necessary. Accordingly, the Company does not have goodwill amortization subsequent to December 31, 2001.

In connection with the adoption of SFAS No. 142, the Company made an assessment of its goodwill for impairment based upon the new rules during the year ended December 31, 2002. Based on the assessment, the Company was not required to adjust the carrying value of its goodwill. As of December 31, 2002, the Company had goodwill of approximately \$3.2 million.

If the provisions of SFAS No. 142 were in effect at January 1, 2000, the following pro forma financial results for the years ended December 31, 2001 and 2000 would have resulted (in thousands):

	2001	2000
Selling general and administrative expense	\$ 52,437	\$ 44,323
Income from operations	22,832	12,510
Net income (loss)	3,453	(7,184)

For the years ended December 31, 2001 and 2000, the Company recorded goodwill amortization of \$250,000 and \$244,000, respectively.

In June 2001, the FASB released SFAS No. 143, "Accounting for Asset Retirement Obligations." This statement addresses the accounting treatment for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. The provisions of the statement apply to legal obligations associated with the retirement of long-lived assets that result from the acquisition, construction, development, or normal operation of a long-lived asset. The statement is effective for financial statements issued for fiscal years beginning after June 15, 2002. The Company will adopt the provisions of SFAS No. 143 during fiscal 2003, but does not expect this statement to have a material impact on its consolidated results of operations or financial position.

In August 2001, the FASB issued SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (SFAS No. 144). SFAS No. 144 addresses financial accounting and reporting for the impairment or disposal of long-lived assets. This Statement requires that long-lived assets be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. SFAS No. 144 requires companies to separately report discontinued operations and extends that reporting to a component of an entity that either has been disposed of (by sale, abandonment, or in a distribution to owners) or is classified as held for sale. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. The Company adopted SFAS No. 144 on January 1, 2002. The adoption of SFAS No. 144 did not have a material impact on its consolidated financial statements.

In July 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." Under SFAS No. 146, a company will record a liability for a cost associated with an exit or disposal activity when that liability is incurred and can be measured at fair value. A liability is incurred when an event obligates the entity to transfer or use assets (i.e., when an event leaves the company little or no discretion to avoid transferring or using the assets in the future). Under previous accounting rules, if a company's management approved an exit plan, the company generally could

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record the costs of that plan as a liability on the approval date, even if the company did not incur the costs until a later date. Under SFAS No. 146, some of those costs might qualify for immediate recognition, others might be recorded during one or more quarters, and still others might not be recorded until incurred in a much later period. The Company is currently reviewing the standard, which is effective for periods beginning after December 31, 2002, applied prospectively, and does not expect it to have a material impact on its results of operations or financial position.

In November 2002, the FASB issued Interpretation No. 45 (FIN No. 45), "*Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*" which expands previously issued accounting guidance and disclosure requirements for certain guarantees. FIN 45 requires recognition of an initial liability for the fair value of an obligation assumed by issuing a guarantee. Guarantees are required to be disclosed in the notes to the financial statements starting with the period ending after December 15, 2002. For certain guarantees issued after December 31, 2002, the fair value of the obligation must be reported on the balance sheet. The Company has adopted the disclosure requirements. The Company does not expect the adoption of the accounting provisions of FIN No. 45 to have a material impact on its results of operations and financial position.

In January 2003, the FASB issued Financial Interpretation No. 46 ("FIN No. 46"), "*Consolidation of Variable Interest Entities, and Interpretation of ARB No. 51,*" which addresses the consolidation by business enterprises of variable interest entities as defined therein and applies immediately to variable interests in variable interest entities created or obtained after January 31, 2003. The Company does not expect the adoption of FIN No. 46 to have a material impact on its results of operations and financial position.

### Reclassifications

Certain amounts in the prior-year consolidated financial statements have been reclassified for comparative purposes to conform to the presentation in the current-year consolidated financial statements.

### Restatement

The accompanying consolidated financial statements as of and for the year ended December 31, 2001 have been restated. (See Note 20).

### (3) REORGANIZATION AND ACQUISITION OF ICM EQUIPMENT COMPANY L.L.C.

On June 17, 2002, the equity holders of H&E Equipment Services L.L.C. (formerly Gulf Wide Industries L.L.C.) and ICM Equipment Company L.L.C. (ICM) formed H&E Holdings by executing a Limited Liability Company Agreement of H&E Holdings and by contributing to H&E Holdings all of the outstanding equity securities and certain outstanding subordinated debt of the two companies to the members of H&E Holdings in exchange for certain equity securities of H&E Holdings. Pursuant to a Contribution Agreement and Plan of Reorganization, H&E Holdings contributed all of the outstanding equity securities of ICM to H&E Equipment Services, consummating the merger and making ICM a wholly-owned subsidiary of H&E Equipment Services. Head and Engquist L.L.C. is also a wholly-owned subsidiary of H&E Equipment Services.

Pursuant to the Contribution Agreement and Plan of Reorganization, H&E Holdings issued a series of preferred and common units in exchange for all the outstanding stock of ICM. The acquisition was accounted for under the purchase method of accounting. H&E Equipment Services was considered

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the acquirer for accounting purposes. Under the purchase method of accounting, the acquired assets and assumed liabilities have been recorded at their estimated fair values at the date of acquisition. There was no goodwill or other intangible assets recorded in connection with the transaction. The operating results of ICM have been included in the accompanying 2002 consolidated financial statements from the date of the acquisition.

The following table summarizes the fair value of assets acquired and liabilities assumed as allocated in purchase accounting (in thousands):

Fair value of assets acquired:	
Cash	\$ 3,643
Accounts receivable	27,020
Inventories	12,082
Rental equipment	129,554
Property and equipment	4,966
Deferred tax assets	9,454
Other assets	1,062
	187,781
Fair value of liabilities assumed:	
Outstanding borrowings on senior secured credit facility	117,493
Accounts payable and accrued liabilities	50,092
Amounts due to members	10,147
Deferred compensation	9,743
Capital lease obligations	306
	187,781
Excess of liabilities assumed over fair value of assets acquired	\$ —

The consolidated results of operations data shown below is presented on an unaudited pro forma basis and represents the results of H&E Equipment Services had the business combination occurred at the beginning of the periods presented (in thousands):

	Years Ended December 31,	
	2002	2001
Revenues	\$ 431,721	\$ 515,262
Net loss	\$ (23,277)	\$ (8,777)

The unaudited pro forma net loss for the year ended December 31, 2002 includes a \$1.2 million fee for early termination of the Company's previous credit facility that is included in interest expense in the accompanying consolidated statement of operations. The unaudited pro forma financial information is presented for informational purposes only and is based upon certain assumptions and estimates, which are subject to change. The results are not necessarily indicative of the operating results that would have occurred had the transaction been consummated at the beginning of the periods presented, nor are they necessarily indicative of future operating results.

#### (4) AUGUST 2001 RECAPITALIZATION

On August 10, 2001, the Company entered into a recapitalization agreement with BRS and the Minority Shareholder Group whereby a further investment was made by BRS into the Company.

BRS contributed \$10.0 million in cash in exchange for \$10.0 million of newly issued Senior Exchangeable Preferred Units. BRS also contributed its outstanding Class A, B and C Preferred Units, with a cumulative liquidation value of approximately \$37.6 million and its \$7.0 million par value Convertible Subordinated Note, plus accrued interest in exchange for \$36.3 million of newly issued Senior Subordinated Preferred Units.

The Minority Shareholder Group contributed its outstanding Class A, B, and C Preferred Units, with a cumulative liquidation value of approximately \$19.9 million, its Class A common units of \$0.8 million and its \$20.6 million Convertible Subordinated Note in exchange for \$1.2 million of newly issued Series A Preferred Units, \$5.0 million of Junior Preferred Units and \$1.2 million of Class B common stock.

Immediately after these transactions, BRS had 115,152.8 shares of Class A common stock and the Minority Shareholder Group had 115,152.8 shares of Class B common stock. The Class A common stock has 2 for 1 voting rights for every share of Class B common stock. This gave BRS 66.7% voting interest in the Company and the Minority Shareholder Group the remaining 33.3%. The BRS investment and exchanges with the Minority Shareholder Group have been accounted for as a recapitalization in the accompanying consolidated financial statements as of December 31, 2001.

#### (5) RECEIVABLES

Receivables consisted of the following at December 31, 2002 and 2001 (in thousands):

	2002	2001
Trade receivables	\$ 63,935	\$ 34,302

Income tax receivables	125	—
Unbilled rental revenue (restated in 2001)	3,255	1,690
Sales-type leases	657	984
Advances to officers and employees	120	149
Affiliated companies	454	80
Other	208	—
	<u>68,754</u>	<u>37,205</u>
Less allowance for doubtful accounts	(3,609)	(708)
	<u>\$ 65,145</u>	<u>\$ 36,497</u>

## (6) INVENTORIES

Inventories consisted of the following at December 31, 2002 and 2001 (in thousands):

	<u>2002</u>	<u>2001</u>
New equipment	\$ 23,242	\$ 9,997
Used equipment	13,511	9,640
Parts, supplies and other	16,709	12,008
	<u>\$ 53,462</u>	<u>\$ 31,645</u>

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## (7) PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at December 31, 2002 and 2001 (in thousands):

	<u>2002</u>	<u>2001</u>
Land	\$ 3,000	\$ 2,995
Office and computer equipment	7,837	4,190
Machinery and equipment	3,220	3,140
Transportation equipment	9,521	5,203
Building and leasehold improvements	8,916	5,881
Construction in progress	—	708
	<u>32,494</u>	<u>22,117</u>
Less accumulated depreciation and amortization	(13,338)	(8,673)
	<u>\$ 19,156</u>	<u>\$ 13,444</u>

## (8) ACCOUNTS PAYABLE

Accounts payable consisted of the following at December 31, 2002 and 2001 (in thousands):

	<u>2002</u>	<u>2001</u>
Trade accounts payable	\$ 36,387	\$ 11,083
Manufacturer flooring plans payable	55,101	29,943
Due to BRS	—	3,208
	<u>\$ 91,488</u>	<u>\$ 44,234</u>

Manufacturer flooring plans payable are financing arrangements for inventory and rental equipment. The interest paid on the manufacturer flooring plans ranges between zero percent and Prime Interest Rate plus 3.5 percent. Certain manufacturer flooring plans provide for a one to twelve month reduced interest rate term or a deferred payment period. The Company makes payments in accordance with the original terms of the financing agreements. However, the Company routinely sells equipment that is financed under manufacturer flooring plans and prior to the original maturity date of the financing agreement. The payable is paid at the time equipment being financed is sold. The flooring plans payable are secured by the equipment being financed.

Maturities (based on original financing terms) of the manufacturer flooring plans payable for each of the next five years ending December 31 are as follows (in thousands):

2003	\$ 15,412
2004	11,857
2005	8,851
2006	16,014
2007	2,967

**(9) ACCRUED EXPENSES AND OTHER LIABILITIES**

Accrued liabilities consisted of the following at December 31, 2002 and 2001 (in thousands):

	2002	2001
Payroll and related liabilities	\$ 5,368	\$ 2,434
Sales, use, and property taxes	3,240	1,027
Accrued interest	1,429	930
Deferred revenue (2001 restated)	1,610	802
Other	682	711
	\$ 12,329	\$ 5,904

**(10) NOTES PAYABLE**

A summary of notes payable as of December 31, 2002 and 2001 are as follows (in thousands):

	2002	2001
Notes payable to a financial institution maturing through 2008. Principal reductions approximate \$21 a month plus interest ranging from 4.25% to 7.63% at December 31, 2002, and 4.75% to 7.63% at December 31, 2001. Notes are collateralized by real estate.	\$ 1,018	\$ 1,504
Notes payable to suppliers maturing through 2005. Payable in monthly installments of approximately \$11. Interest is at 2.9%. Notes are collateralized by equipment	304	1,817
Notes payable to finance companies maturing through 2006. Payable in monthly installments of \$3. Interest ranges from 9.5% to 10.5%. Notes are collateralized by equipment	80	103
	\$ 1,402	\$ 3,424

Maturities of notes payable for each of the next five years ending December 31, are as follows (in thousands):

2003	\$ 348
2004	335
2005	258
2006	184
2007	181
Thereafter	96
	\$ 1,402

**(11) CONVERTIBLE AND PREFERRED SECURITIES**

**Senior Exchangeable Preferred Units**

In connection with the August 10, 2001 recapitalization, BRS purchased for \$10.0 million in cash 10,000 units of \$1,000 par value Senior Exchangeable Preferred Units. These units include a 10% liquidation value compounded semi-annually from their issuance date. The liquidation value is to include the par value plus any accreted value to be paid. At any time prior to July 31, 2006, the holders of the Senior Exchangeable Preferred Units could have exchanged any part of the liquidation value of

these units into a senior subordinated promissory note of either the Company or its subsidiary, at the election of the holder.

As the redemption of the Senior Exchangeable Preferred Units was outside of the control of the Company, they were classified outside of members' equity in the accompanying consolidated balance sheet as of December 31, 2001. The difference between the carrying value and liquidation value was accreted through periodic charges to accumulated deficit.

**Senior Subordinated Preferred Units**

In connection with the August 10, 2001 recapitalization, the Company issued 36,286,902 shares of \$1,000 par value Senior Subordinated Preferred Units. These units included an 8% liquidation value compounded semi-annually from their issuance date. The liquidation value as of December 31, 2001 included the

par value plus any accreted value to be paid under the terms Agreement. The Senior Subordinated Preferred Units could be redeemed at the discretion of the Company's board of directors. The Company's board of directors is subject to voting control of BRS, who have voting control of the Company. As such, the Senior Subordinated Preferred Units were classified outside of members' equity (deficit) in the accompanying consolidated balance sheet as of December 31, 2001. The difference between the carrying value and the liquidation value was accreted through periodic charges to accumulated deficit.

### Series A Senior Preferred Units

In connection with the August 10, 2001 recapitalization, the Company issued 1,235,229 shares of \$1,000 par value Senior Series A Preferred Units. These units included a 12% liquidation value compounded semi-annually from their issuance date. The liquidation value was to include the par value plus any accreted value to be paid under the terms Agreement. These units could be redeemed at the discretion of the Company's board of directors.

### Junior Preferred Units

In connection with the August 10, 2001 recapitalization, the Company issued 5,000 shares of \$1,000 par value Junior Preferred Units. These units included an 8% liquidation value compounded semi-annually from their issuance date. The liquidation value was to include the par value plus any accreted value to be paid under the terms Agreement. These units could be redeemed at the discretion of the Company's board of directors.

The Series A Senior Preferred Units and the Junior Preferred Units were held by the Minority Shareholders and are included in members' equity (deficit) in the accompanying consolidated balance sheet as of December 31, 2001.

In connection with the Company's reorganization and acquisition of ICM in June 2002 (see Note 3), the Senior Exchangeable Preferred Units, the Senior Subordinated Preferred Units, the Series A Senior Preferred Units and the Junior Preferred Units were converted to member's interest.

## (12) CAPITAL LEASE OBLIGATIONS

The Company is the lessee of various equipment under capital leases expiring in various years through 2005. The assets and liabilities under capital leases are recorded at the lower of the present value of the minimum lease payments or the fair value of the assets. The assets are amortized over estimated productive lives. Amortization of assets under capital leases is included in depreciation expense.

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Following is a summary of assets held under capital leases at December 31, 2002 and 2001 (in thousands):

	2002	2001
Rental equipment	\$ 18,918	\$ 14,791
Data processing equipment	278	28
	19,196	14,819
Less accumulated amortization	(3,588)	(1,298)
	\$ 15,608	\$ 13,521

Future minimum lease payments under capital leases as of December 31, 2002 are as follows (in thousands):

2003	\$ 9,084
2004	1,355
2005	1,288
Total minimum lease payments	11,727
Less amount representing interest	(886)
Total present value of minimum payments with interest ranging from 5% to 9.5%	\$ 10,841

## (13) SENIOR SECURED NOTES, SENIOR SUBORDINATED NOTES AND SENIOR SECURED CREDIT FACILITY

In connection with the reorganization of the Company and acquisition of ICM (see Note 3), the Company issued \$200.0 million aggregate principal amount of 11<sup>1</sup>/<sub>8</sub>% senior secured notes and \$53.0 million aggregate principal amount of 12<sup>1</sup>/<sub>2</sub>% senior subordinated notes and entered into a new senior secured credit facility. The senior secured credit facility is comprised of a \$150.0 million revolving line of credit. The proceeds from the senior secured notes, senior subordinated notes and senior secured credit facility were used to payoff the existing credit facilities of the two companies which had aggregate outstanding balances of approximately \$306.4 million, repay senior subordinated promissory notes of approximately \$13.3 million, and pay for financing costs of approximately \$13.5 million. The deferred financing costs are being amortized to interest expense over the life of the respective related debt.

### Senior Secured Notes

On June 17, 2002, the Company issued \$200.0 million aggregate principal amount of 11<sup>1</sup>/<sub>8</sub>% Senior Secured Notes due 2012. The following table reconciles the \$200.0 million Senior Secured Notes to the December 31, 2002 balance (in thousands):

Aggregate principal amount issued	\$ 200,000
Initial purchasers' discount	(1,474)
Initial purchasers' discount amortization (June 17, 2002 through December 31, 2002)	44

The net proceeds from the sale of the notes were approximately \$190.7 million (after deducting the initial purchasers' discount and related financing costs). Interest on the notes will be paid semi-annually on June 15 and December 15 of each year, commencing on December 15, 2002. The notes mature on June 15, 2012 and are guaranteed by the Company's domestic subsidiaries (see

Note 21). The notes are secured by junior security interests in substantially all of the assets of H&E Equipment Services. The Company, at its option, may redeem the notes on or after June 15, 2007, at specified redemption prices, which range from 105.563% in 2007 to 100.0% in 2010 and thereafter. In addition, at any time on or prior to June 15, 2005, the Company may redeem up to 35% of the outstanding notes at a redemption price of 111.125% with the net proceeds of certain equity offerings. The indenture governing the notes contains certain restrictive covenants including limitations on (i) additional indebtedness, (ii) restricted payments, (iii) liens and guarantees, (iv) dividends and other payments, (v) preferred stock of subsidiaries, (vi) transactions with affiliates, (vii) sale and leaseback transactions, and (viii) the Company's ability to consolidate, merge or sell all or substantially all of its assets.

### Senior Subordinated Notes

On June 17, 2002, the Company issued \$53.0 million aggregate principal amount of 12<sup>1</sup>/<sub>2</sub>% Senior Subordinated Notes due 2013. The following table reconciles the \$53.0 million Senior Subordinated Notes to the December 31, 2002 balance (in thousands):

Aggregate principal amount issued	\$ 53,000
Initial purchasers' discount	(10,591)
Initial purchasers' discount amortization (June 17, 2002 through December 31, 2002)	193
Senior Subordinated Notes balance at December 31, 2002	\$ 42,602

The net proceeds from the sale of the notes were approximately \$40.7 million (after deducting the initial purchasers' discount and related financing costs). Interest on the notes will be paid semi-annually on June 15 and December 15 of each year, commencing on December 15, 2002. The notes mature on June 15, 2013 and are guaranteed by the Company's domestic subsidiaries (see Note 21). The notes are senior to all other subordinated debt and are unsecured. The Company, at its option, may redeem the notes on or after June 15, 2007, at specified redemption prices which range from 106.250% in 2007 to 100.0% in 2010 and thereafter. In addition, at any time prior to June 15, 2005, the Company may redeem up to 35% of the outstanding notes at a redemption price of 112.50% with the net proceeds of certain equity offerings. The indenture governing the notes contains certain restrictive covenants including limitations on (i) additional indebtedness, (ii) restricted payments, (iii) liens and guarantees, (iv) dividends and other payments, (v) preferred stock of subsidiaries, (vi) transactions with affiliates, (vii) sale and leaseback transactions, and (viii) the Company's ability to consolidate, merge or sell all or substantially all of its assets.

In connection with and attached to the issuance of the senior subordinated notes, H&E Holdings issued approximately 553 shares of Series A preferred stock, 1,476 shares of Series B preferred stock, 4,239 shares of Series C preferred stock, 2,613 shares of Series D preferred stock, 106,842 shares of Class A common stock, and 103,684 shares of Class B common stock, all of which are limited liability company interests in H&E Holdings.

Also in connection with the issuances of the senior secured notes and the senior subordinated notes, the Company recorded original issue discounts of \$1.5 million and \$3.0 million, respectively. Additionally, \$7.6 million of value was allocated to the H&E Holdings' limited liability company interest issued as part of the offering of the senior subordinated notes. The value allocated to these interests has been accounted for as additional original issue discount. The value allocated to the limited liability interests was based on an estimate of the relative fair values of these interests and the senior subordinated notes at the date of issuance. The original issue discounts are being amortized to interest expense over the lives of the respective notes using the effective interest rate method.

### Senior Secured Credit Facility

In accordance with the senior secured credit facility the Company may borrow up to \$150 million depending upon the availability of borrowing base collateral consisting of eligible trade receivables, inventories, property, plant and equipment, and other assets. The senior secured credit facility bears interest at LIBOR plus 300 basis points and matures June 17, 2007. The credit facility is senior to all other outstanding debt, secured by substantially all the assets of the Company, and is guaranteed by the Company's domestic subsidiaries (see Note 21). The balance outstanding on the senior secured credit facility as of December 31, 2002 was approximately \$76.7 million. Additional borrowings available under the terms of the senior secured credit facility as of December 31, 2002 totaled \$72.8 million. The average interest rate on outstanding borrowings for the year ended December 31, 2002 was 5.8%.

If at any time an event of default exists, the interest rate on the senior secured credit facility will increase by 2.0% per annum. The Company is also required to pay a commitment fee equal to 0.5% per annum in respect of undrawn commitments under the revolving credit facility.

In accordance with the terms of the senior secured credit facility, the Company must comply with certain restrictive financial covenants and must maintain certain financial ratios. The Company is required to, among other things, satisfy certain financial tests relating to: (a) the maximum senior debt to tangible assets ratio, (b) maximum leverage ratio, (c) maximum adjusted leverage ratio, (d) minimum utilization rate of equipment inventory ratio, (e) minimum adjusted interest coverage ratio and (f) maximum property and equipment capital expenditures.

At December 31, 2002, the Company was in compliance with the covenants and terms of the senior secured notes, senior subordinated notes, and the senior secured credit facility.

On March 31, 2003, the senior secured credit facility was amended to extend the current year requirement for filing the Company's audited financial statements to the earlier of April 15, 2003, or the date the Company files its annual report on Form 10-K with the Securities and Exchange Commission.

The annual maturities of senior secured credit facility, senior secured notes and senior subordinated notes, as of December 31, 2002 are as follows (in thousands):

2007	\$	76,724
Thereafter		253,000
		<u>329,724</u>
Less unamortized discount		(11,828)
	\$	<u>317,896</u>

#### (14) INCOME TAXES

Income tax provision (benefit) for the years ended December 31, 2002, 2001 (restated) and 2000 consists of (in thousands):

	Current	Deferred	Total
<b>Year ended December 31, 2002:</b>			
U.S. Federal	\$ —	\$ (1,091)	\$ (1,091)
State	20	(200)	(180)
	<u>\$ 20</u>	<u>\$ (1,291)</u>	<u>\$ (1,271)</u>
<b>Year ended December 31, 2001 (restated):</b>			
U.S. Federal	\$ —	\$ 1,589	\$ 1,589
State	(356)	210	(146)
	<u>\$ (356)</u>	<u>\$ 1,799</u>	<u>\$ 1,443</u>
<b>Year ended December 31, 2000:</b>			
U.S. Federal	\$ —	\$ (2,758)	\$ (2,758)
State	—	(365)	(365)
	<u>\$ —</u>	<u>\$ (3,123)</u>	<u>\$ (3,123)</u>

Significant components of the Company's deferred income tax assets and liabilities as of December 31, 2002 and 2001 are as follows (in thousands):

	2002	2001
		(Restated— See Note 20)
<b>Deferred tax assets:</b>		
Accounts receivable	\$ 1,371	\$ 269
Inventory	433	526
Net operating losses	42,157	14,042
AMT credit	832	832
Sec. 263A costs	577	—
Non-deductible accrued liabilities	1,100	—
Goodwill	15,957	—
Deferred compensation	2,661	—
Accrued interest	1,227	—
Interest expense—high yield debt	1,013	—
Sec. 754 adjustment	10,707	—
Other assets	307	349
	<u>78,342</u>	<u>16,018</u>
Valuation allowance	(20,453)	—
	<u>57,889</u>	<u>16,018</u>
<b>Deferred tax liabilities:</b>		
Property and equipment	(56,309)	(26,711)
Investments	(1,520)	—
Other	(60)	(67)
	<u>(57,889)</u>	<u>(26,778)</u>



Net deferred taxes

\$ — \$ (10,760)

The difference between income taxes computed using statutory federal income tax rates and the effective corporate rates are as follows for the years ended December 31, 2002, 2001, and 2000 (in thousands):

	2002	2001	2000
		(Restated— See Note 20)	
Computed tax at statutory rates	\$ (4,877)	\$ 1,605	\$ (3,555)
Non-deductible expenses	577	240	133
State income tax—net of federal tax effect	(119)	(96)	(241)
Beneficial conversion feature	—	—	425
Increase in valuation allowance	3,107	—	—
Other	41	(306)	115
	<u>\$ (1,271)</u>	<u>\$ 1,443</u>	<u>\$ (3,123)</u>

At December 31, 2002, 2001, and 2000, the Company had available net operating loss carryforwards of approximately \$110.9 million, \$37.4 million, and \$36.9 million respectively, which expire in varying amounts from 2018 through 2022. The Company also had Federal alternative minimum tax credit carryforwards at December 31, 2002, 2001 and 2000 of approximately \$0.8 million which do not expire. The utilization of all or some of these loss carryforwards will be limited pursuant to Internal Revenue Code Section 382 as a result of ownership changes.

Management has concluded that it is more likely than not that the Company will not have sufficient taxable income within the carryback and carryforward periods permitted by the current law to allow for the utilization of certain carryforwards and other tax attributes. Therefore, a valuation allowance of \$20.5 million has been established to reduce the deferred tax assets as of December 31, 2002.

## (15) COMMITMENTS AND CONTINGENCIES

### Operating Leases

The Company leases certain property and rental equipment under noncancelable operating lease agreements expiring at various dates through 2018. Rent expense on property and rental equipment under noncancelable operating lease agreements for the years ended December 31, 2002, 2001 and 2000 amounted to approximately \$21,023,000, \$18,340,000 and \$5,986,000, respectively.

Future minimum operating lease payments, in the aggregate, are as follows (in thousands):

#### Years ending December 31:

2003	\$ 29,366
2004	21,098
2005	18,660
2006	14,685
2007	6,682
Thereafter	9,935
	<u>\$ 100,426</u>

### Legal Matters

In July 2000, a complaint was filed in the General Court of Justice, Superior Court Division, State of North Carolina, County of Mecklenburg under the caption Sunbelt Rentals, Inc. v. Head & Engquist Equipment, L.L.C. ("H&E"), d/b/a H&E Hi-Lift, et al. The complaint was filed by a competitor of H&E, BPS Equipment, which was acquired by the plaintiff in June 2000, against H&E, Robert W. Hepler, an executive officer, and other employees of H&E. The complaint alleges, among other things, breach of fiduciary duty, misappropriation of trade secrets, unfair trade practices, interference with prospective advantage and civil conspiracy, in connection with the start-up of H&E's Hi-Lift division in January 2000 and the hiring of former employees of BPS Equipment. The complaint seeks, among other things, an order which enjoins the defendants from using BPS Equipment's trade secrets, awards of unspecified compensatory and punitive damages to the plaintiff as well as awarding the plaintiff's costs and attorneys' fees.

The Company is also involved in various claims and legal actions arising in the ordinary course of business. In the opinion of management, after consultation with legal counsel, the ultimate disposition of all matters will not have a material adverse effect on the Company's consolidated financial position, results of operations, or liquidity.

### Employment Contracts

The Company has entered into employment contracts with various officers and members, which provide for annual payments to the officers and members, subject to their continued employment with the Company. The employment contracts mature in February 2003 and on December 31, 2006 and require aggregate annual payments of approximately \$1,453,000 with bonuses at the discretion of the board of directors.

#### **Letter of Credit**

The Company had outstanding letters of credit in the amount of \$470,000 and \$950,000 as of December 31, 2002 and 2001, respectively.

#### **(16) EMPLOYEE BENEFIT PLANS**

The Company offers its employees participation in a qualified 401(k)/profit-sharing plan which requires the Company to match employee contributions up to predetermined limits for qualified employees as defined by the plan. For the years ended December 31, 2002, 2001 and 2000, the Company contributed \$609,000, \$250,000 and \$212,000, respectively, to this plan.

#### **(17) DEFERRED COMPENSATION PLANS**

In connection with the acquisition of ICM, the Company assumed a nonqualified executive deferred compensation plan under which certain employees had previously elected to defer a portion of their annual compensation. Participants in the plan can no longer defer compensation. Compensation previously deferred under the plan is payable upon the termination, disability, or death of the participants. The plan accumulates interest each year at a bank's prime rate in effect as of the beginning of January. This rate remains constant throughout the year. The effective rate for the 2002 plan year was 4.75 percent. The aggregate deferred compensation (including accrued interest of \$2,355,000) at December 31, 2002 was \$4,343,000.

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The Company also assumed, in connection with the acquisition of ICM, a liability for subordinated deferred compensation for certain officers and members of the Company. Compensation deferred is payable in December 2013 and is subordinate to all other debt. Interest is accrued quarterly at a rate of 13 percent per annum. The aggregate deferred compensation (including accrued interest of \$890,000) at December 31, 2002 was \$5,890,000.

#### **(18) RELATED PARTY TRANSACTIONS**

For the three years ended December 31, 2002, the Company leased certain facilities from companies controlled by officers and members. The lease terms range from 3 to 20 years with expiration dates ranging from 2003 to 2018. Total rent paid during the years ended December 31, 2002, 2001 and 2000 was \$1,740,000, \$471,000 and \$533,000, respectively.

The Company purchased insurance from an insurance agency, related through common ownership, for \$3,096,000, \$2,017,000 and \$1,657,000 for the years ended December 31, 2002, 2001 and 2000, respectively.

The Company owed companies related through common ownership \$7,000 and \$3,207,000 at December 31, 2002 and 2001, respectively. The Company had no sales transactions with these affiliated companies during 2002 and 2001.

The Company rented equipment from an officer for \$462,000 and \$126,000 for the years ended December 31, 2001 and 2000, respectively. The equipment was purchased from the officer for \$3,000,000 during 2001.

The Company had a management agreement with an affiliate, under which the Company was obligated to pay the greater of \$500,000 or 1% of earnings before interest, taxes, depreciation and amortization. The total paid for the years ended December 31, 2002, 2001 and 2000 was \$670,000, \$530,000 and \$500,000, respectively.

In connection with the acquisition of ICM, the Company entered into a management agreement with an affiliate payable in the greater of \$2 million annually or 1.75% of annual earnings before interest, taxes, depreciation, and amortization, excluding operating lease expense, plus all reasonable out-of-pocket expenses. The total amount paid to the affiliate under the management agreement for 2002 was \$1,085,000.

In connection with the recapitalization of H&E in 1999, the Company entered into a consulting and non-competition agreement with a former stockholder of the Company for \$3,000,000, payable in monthly installments of \$25,000 per month for ten years. The total amount paid was \$300,000 for each of the years ended December 31, 2002, 2001 and 2000.

The Company has consulting and noncompetition agreements with two former stockholders of Coastal Equipment, Inc. acquired in 1999 for \$1,000,000, payable in four annual installments of \$250,000 beginning March 1, 2000.

During the years ended December 31, 2002, 2001 and 2000, the Company paid approximately \$255,000, \$206,000 and \$202,000, respectively, in fees to a charter aircraft company in which the Chief Executive Officer has ownership. The Company had a receivable from the charter aircraft company of approximately \$101,000 and \$80,000 as of December 31, 2002 and 2001, respectively.

During the year ended December 31, 2002, the Company expensed \$360,000 for interest earned under a deferred compensation plan for the chairman and an executive officer (see Note 17).

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#### **(19) SEGMENT INFORMATION**

The Company has identified five reportable segments: equipment rentals, new equipment sales, used equipment sales, sales of parts and services. These segments are based upon how management of the Company allocates resources and assesses performance. Non-segmented revenues and non-segmented costs

relate to equipment support activities including transportation, hauling, parts freight and damage- waiver charges and are not allocated to the other reportable segments. There were no sales between segments for any of the periods presented. Selling, general, and administrative expenses as well as all other income and expense items below gross profit are not generally allocated to reportable segments. The Company does not compile discrete financial information by its segments other than the information presented below. The following table presents information about the Company's reportable segments (in thousands):

	Years Ended December 31,		
	2002	2001	2000
	(Restated—See Note 20)		
<b>Revenues:</b>			
Equipment rentals	\$ 136,624	\$ 98,696	\$ 70,625
New equipment sales	72,143	84,138	53,345
Used equipment sales	52,487	59,441	51,402
Parts sales	47,218	36,524	34,435
Service revenues	27,755	19,793	16,553
<b>Total segmented revenues</b>	<b>336,227</b>	<b>298,592</b>	<b>226,360</b>
Non-segmented revenues	15,473	10,925	8,236
<b>Total revenues</b>	<b>\$ 351,700</b>	<b>\$ 309,517</b>	<b>\$ 234,596</b>
<b>Gross profit:</b>			
Equipment rentals	\$ 52,745	\$ 45,538	\$ 31,080
New equipment sales	6,088	6,696	5,435
Used equipment sales	9,461	8,063	7,001
Parts sales	13,207	9,448	8,589
Service revenues	16,317	11,687	9,414
<b>Total gross profit from revenues</b>	<b>97,818</b>	<b>81,432</b>	<b>61,519</b>
Non-segmented gross loss	(1,340)	(3,514)	(3,252)
<b>Total gross profit</b>	<b>\$ 96,478</b>	<b>\$ 77,918</b>	<b>\$ 58,267</b>
<b>Years Ended December 31,</b>			
	<b>2002</b>	<b>2001</b>	<b>2000</b>
(Restated—See Note 20)			
<b>Segment identified assets</b>			
Equipment sales	\$ 36,753	\$ 19,637	\$ 29,907
Equipment rentals	309,697	195,701	147,228
Parts and service	16,709	12,008	12,320
<b>Total segment identified assets</b>	<b>363,159</b>	<b>227,346</b>	<b>189,455</b>
Non-segment identified assets	105,460	59,783	56,506
<b>Total assets</b>	<b>\$ 468,619</b>	<b>\$ 287,129</b>	<b>\$ 245,961</b>

The Company operates only in U.S. markets and had no international sales for any of the periods presented. No one customer accounted for more than 10% of the Company's sales on an overall or segment basis for any of the periods presented.

## (20) RESTATEMENT OF FINANCIAL STATEMENTS

Our previously issued consolidated financial statements as of and for the year ended December 31, 2001 have been restated to correct errors related to the calculation of unbilled rental revenue and deferred revenue related to rental contracts with terms that extend across reporting periods. As a result of the restatement, we also made corrections to income tax accounts, members' equity, and other related items.

The Company's policy is to recognize revenue from equipment rentals in the period earned, over the contract term, regardless of the timing of the billing to customers. A rental contract term can be daily, weekly or monthly. Because the term of the contracts can extend across financial reporting periods, we record unbilled rental revenue and deferred revenue at the end of reporting periods so rental revenue is appropriately stated in the periods presented in accordance with generally accepted accounting principles in the United States of America.

During the preparation of the financial statements for the year ended December 31, 2002, we discovered certain errors related to the unbilled rental revenue and deferred revenue balance sheet accounts, and to the timing of when rental revenue was recorded in the past. On a cumulative basis, as of December 31, 2001, we had recognized approximately \$1.2 million of after-tax rental revenue that should be recognized in subsequent periods. Of the \$1.2 million, approximately

\$0.9 million related to years ended December 31, 1999 or prior, and approximately \$0.3 million related to the year ended December 31, 2001. The impact of the errors was not material to the consolidated statement of operations for the year ended December 31, 2000.

The following table summarizes the effect of the restatement adjustments on our consolidated financial statements (in thousands):

	Previously Reported	Restated
<b>Year ended December 31, 2001</b>		
Revenues:		
Equipment rentals	\$ 99,229	\$ 98,696
Total revenues	306,191	309,517
Gross profit:		
Equipment rentals	46,071	45,538
Total gross profit	75,756	77,918
Income from operations	23,115	22,582
Income before income taxes	5,276	4,743
Provision for income taxes	1,648	1,443
Net income	3,628	3,300
<b>As of December 31, 2001</b>		
Receivables, net of allowance for doubtful accounts	\$ 37,819	\$ 36,497
Total assets	288,451	287,129
Accrued expenses and other liabilities	5,264	5,904
Deferred income taxes	11,515	10,760
Total liabilities	257,345	257,230
Total members' deficit	(16,710)	(17,917)
Total liabilities and members' deficit	288,451	287,129
<b>As of December 31, 2000</b>		
Total members' deficit	\$ (68,098)	\$ (68,977)
<b>As of December 31, 1999</b>		
Total members' deficit	\$ (54,324)	\$ (55,203)

**(21) CONDENSED CONSOLIDATING FINANCIAL INFORMATION OF GUARANTOR SUBSIDIARIES**

All of the indebtedness of H&E Equipment Services, the parent co-issuer, is guaranteed by GNE Investments, Inc. and its wholly owned subsidiary Great Northern Equipment, Inc. The guarantor subsidiaries are all wholly owned and the guarantees, made on a joint and several basis, are full and unconditional (subject to subordination provisions and subject to a standard limitation which provides that the maximum amount guaranteed by each guarantor will not exceed the maximum amount that can be guaranteed without making the guarantee void under fraudulent conveyance laws). There are no restrictions on H&E Equipment Services' ability to obtain funds from the guarantor subsidiaries by dividend or loan.

The condensed consolidating financial information of H&E Equipment Services and its subsidiaries are included below. Because the business combination and the debt refinancing (guaranteed by the subsidiaries) was consummated on June 17, 2002, condensed consolidating financial information as of December 31, 2002 is the only period presented. The condensed financial information for H&E Finance Corp., the subsidiary co-issuer, is not presented because H&E Finance Corp. has no assets or operations.

	December 31, 2002			
	H&E Equipment Services	Guarantor Subsidiaries	Elimination	Consolidated
<b>ASSETS:</b>				
Cash	\$ 3,331	\$ 67	\$ —	\$ 3,398
Receivables, net	64,742	403	—	65,145
Inventories	52,005	1,457	—	53,462
Prepaid expenses and other assets	1,941	4	—	1,945
Rental equipment, net	303,811	5,886	—	309,697
Property and equipment, net	19,031	125	—	19,156
Deferred financing costs, net	12,612	—	—	12,612
Investment in guarantor subsidiaries	4,841	—	(4,841)	—
Goodwill	3,204	—	—	3,204
Total assets	\$ 465,518	\$ 7,942	\$ (4,841)	\$ 468,619

**LIABILITIES AND MEMBERS' EQUITY:**

Senior secured credit facility	\$ 76,724	\$ —	\$ —	\$ 76,724
Accounts payable	91,400	88	—	91,488
Accrued expenses and other liabilities	9,316	3,013	—	12,329
Notes payable	1,402	—	—	1,402
Senior secured notes, net of discount	198,570	—	—	198,570
Senior subordinated notes, net of discount	42,602	—	—	42,602
Capital lease obligations	10,841	—	—	10,841
Deferred compensation	10,233	—	—	10,233
	<hr/>	<hr/>	<hr/>	<hr/>
Total liabilities	441,088	3,101	—	444,189
Member's interest	24,430	4,841	(4,841)	24,430
	<hr/>	<hr/>	<hr/>	<hr/>
Total liabilities and member's equity	\$ 465,518	\$ 7,942	\$ (4,841)	\$ 468,619

**H&E EQUIPMENT SERVICES L.L.C.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**CONDENSED CONSOLIDATING STATEMENT OF OPERATIONS**  
 (in thousands)

	Year Ended December 31, 2002			
	H&E Equipment Services	Guarantor Subsidiaries	Elimination	Consolidated
<b>Revenues:</b>				
Equipment rentals	\$ 134,030	\$ 2,594	\$ —	\$ 136,624
New equipment sales	71,298	845	—	72,143
Used equipment sales	50,368	2,119	—	52,487
Parts sales	46,563	655	—	47,218
Service revenues	27,351	404	—	27,755
Other	15,416	57	—	15,473
	<hr/>	<hr/>	<hr/>	<hr/>
Total revenues	345,026	6,674	—	351,700
	<hr/>	<hr/>	<hr/>	<hr/>
<b>Cost of Revenues:</b>				
Rental depreciation	45,619	852	—	46,471
Rental expense	36,723	685	—	37,408
New equipment sales	65,355	700	—	66,055
Used equipment sales	41,500	1,526	—	43,026
Parts sales	33,561	450	—	34,011
Service revenues	11,318	120	—	11,438
Other	16,768	45	—	16,813
	<hr/>	<hr/>	<hr/>	<hr/>
Total cost of revenues	250,844	4,378	—	255,222
	<hr/>	<hr/>	<hr/>	<hr/>
<b>Gross Profit:</b>				
Equipment rentals	51,688	1,057	—	52,745
New equipment sales	5,943	145	—	6,088
Used equipment sales	8,868	593	—	9,461
Parts sales	13,002	205	—	13,207
Service revenues	16,033	284	—	16,317
Other	(1,352)	12	—	(1,340)
	<hr/>	<hr/>	<hr/>	<hr/>
Total gross profit	94,182	2,296	—	96,478
	<hr/>	<hr/>	<hr/>	<hr/>
Selling, general and administrative expenses	80,466	1,828	—	82,294
Equity in earnings of guarantor subsidiaries	513	—	(513)	—
Gain on sale of property and equipment	45	14	—	59
	<hr/>	<hr/>	<hr/>	<hr/>
Income from operations	14,274	482	(513)	14,243

Other income (expense):				
Interest expense	(28,951)	(4)	—	(28,955)
Other, net	365	7	—	372
<b>Total other income (expense)</b>	<b>(28,586)</b>	<b>3</b>	<b>—</b>	<b>(28,583)</b>
Income (loss) before income taxes	(14,312)	485	(513)	(14,340)
Benefit for income taxes	(1,243)	(28)	—	(1,271)
<b>Net income (loss)</b>	<b>\$ (13,069)</b>	<b>\$ 513</b>	<b>\$ (513)</b>	<b>\$ (13,069)</b>

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	Year Ended December 31, 2002			
	H&E Equipment Services	Guarantor Subsidiaries	Elimination	Consolidated
<b>Cash flows from operating activities:</b>				
Net income (loss)	\$ (13,069)	\$ 513	\$ (513)	\$ (13,069)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:				
Depreciation on property and equipment	2,926	94	—	3,020
Depreciation on rental equipment	44,725	1,746	—	46,471
Amortization of loan discounts and deferred financing costs	1,091	—	—	1,091
Provision for losses on accounts receivable	1,517	—	—	1,517
Gain on sale of property and equipment	(45)	(14)	—	(59)
Gain on sale of rental equipment	(5,798)	(528)	—	(6,326)
Deferred income taxes	(1,306)	—	—	(1,306)
Equity in earnings of guarantor subsidiaries	(513)	—	513	—
<b>Net cash provided by operating activities</b>	<b>14,964</b>	<b>4,710</b>	<b>—</b>	<b>19,674</b>
<b>Cash flows from investing activities:</b>				
Purchases of property and equipment	(3,755)	(66)	—	(3,821)
Purchases of rental equipment	(46,584)	(140)	—	(46,724)
Proceeds from sale of property and equipment	115	—	—	115
Proceeds from sale of rental equipment	31,953	1,785	—	33,738
Cash acquired in ICM business combination	3,643	—	—	3,643
<b>Net cash (used in) provided by investing activities</b>	<b>(14,628)</b>	<b>1,579</b>	<b>—</b>	<b>(13,049)</b>
<b>Cash flows from financing activities:</b>				
Net proceeds from issuance of senior secured notes	198,526	—	—	198,526
Net proceeds from issuance of senior subordinated notes	50,009	—	—	50,009
Payments of amounts due to members	(13,347)	—	—	(13,347)
Payment of deferred financing costs	(13,466)	—	—	(13,466)
Borrowings on senior secured credit facility	436,081	—	—	436,081
Payments on senior secured credit facility	(651,575)	(6,914)	—	(658,489)
Principal payments of notes payable	(2,022)	—	—	(2,022)
Payments on capital lease obligations	(4,841)	—	—	(4,841)
<b>Net cash used in financing activities</b>	<b>(635)</b>	<b>(6,914)</b>	<b>—</b>	<b>(7,549)</b>
<b>Net decrease in cash</b>	<b>(299)</b>	<b>(625)</b>	<b>—</b>	<b>(924)</b>
Cash, beginning of year	3,630	692	—	4,322
<b>Cash, end of year</b>	<b>\$ 3,331</b>	<b>\$ 67</b>	<b>\$ —</b>	<b>\$ 3,398</b>

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

None

## PART III

## ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS

The following table sets forth the names, ages and titles, as well as a brief account of the business experience, of each person who is a director or executive officer of H&E Equipment Services.

Name	Age	Title
Gary W. Bagley	55	Chairman and Director
John M. Engquist	49	President, Chief Executive Officer and Director
Lindsay C. Jones	40	Chief Financial Officer
Terence L. Eastman	50	Senior Vice President, Finance
William W. Fox	58	Vice President, Cranes and Earthmoving
Robert W. Hepler	46	Vice President, Hi-Lift
Kenneth R. Sharp, Jr	57	Vice President, Lift Trucks
John D. Jones	45	Vice President, Product Support
Dale W. Roesener	45	Vice President, Fleet Management
Bradley W. Barber	29	Vice President, Rental Operations
Bruce C. Bruckmann	49	Director
Harold O. Rosser	54	Director
J. Rice Edmonds	32	Director
John T. Sawyer	58	Director
Keith E. Alessi	48	Director
Lawrence C. Karlson	60	Director

*Gary W. Bagley, Chairman and Director*, served as President of ICM since 1996 and Chief Executive Officer since 1998. Prior to 1996, he held various positions at ICM, including Salesman, Sales Manager and General Manager. Prior to that, Mr. Bagley served as Vice President and ICM General Manager of Wheeler Machinery. Mr. Bagley serves on a number of dealer advisory boards and industry association boards.

*John M. Engquist, President, Chief Executive Officer and Director*, served as President and Chief Executive Officer of H&E since 1995 and as a director of Gulf Wide since 1999. From 1975 to 1994, he held various operational positions at H&E, starting as a mechanic's helper. Mr. Engquist serves on the board of directors of St. Jude's Children's Hospital in Memphis, Tennessee, Cajun Contractors & Engineers, Inc. and Business Bank of Baton Rouge.

*Lindsay C. Jones, Chief Financial Officer*, joined ICM as Chief Financial Officer in October 1998. From 1994 to 1998, Mr. Jones served as Chief Financial Officer and Treasurer for Midwest Office, Inc. Prior to that, Mr. Jones was a Manager with KPMG servicing clients in the retail and financial service markets. Mr. Jones is a Certified Public Accountant. Mr. Jones is a member of the American Institute of Certified Public Accountants and the Utah Association of Certified Public Accountants.

*Terence L. Eastman, Senior Vice President, Finance*, served as Chief Financial Officer of H&E since 1994. Prior to joining H&E, Mr. Eastman was the regional controller for Rollins Environmental Services from 1987 to 1994. From 1974 to 1987, Mr. Eastman held various financial positions with CF&I Steel Corporation in Pueblo, Colorado.

*William W. Fox, Vice President, Cranes and Earthmoving*, served as Executive Vice President and General Manager of H&E since 1995. Mr. Fox served as President of South Texas Equipment Co., a subsidiary for H&E, from 1995 to 1997. Prior to that, Mr. Fox held various executive and managerial positions with the Manitowoc Engineering Company. He was Executive Vice President/General Manager from 1989 to 1995, Vice President Sales from 1988 to 1989, and General Manager of the company for two years, from 1986 to 1988. Before joining Manitowoc, Mr. Fox worked for six years as Executive Vice President/General Manager at North Central Crane, from 1980 to 1986.

*Robert W. Hepler, Vice President, Hi-Lift*, served as President of Hi-Lift Division at H&E since 1999. From 1992 to 1999, he was President of BPS Equipment Division of Rentakil, plc. From 1988 to 1992, he served as President of Booms & Scissors at BET Plant Services, which acquired the company he founded in 1982, Hepler Hi-Lift.

*Kenneth R. Sharp, Jr., Vice President, Lift Trucks*, began his career at ICM in 1973 and served as Executive Vice President of ICM since 1996. From 1989 to 1996, Mr. Sharp served as General Manager of the ICM Power Systems Division. From 1983 to 1989, he held various positions at ICM including Salesman, Sales Manager and Product Support Manager.

*John D. Jones, Vice President, Product Support*, served as Vice President of Product Support Service at H&E since 1995. From 1991 to 1994, he was General Manager of Product Support at Louisiana Machinery. From 1987 to 1991 he served as General Manager of the Parts Operation at Holt Company of Louisiana. From 1976 to 1987, Mr. Jones worked in Product Support and Marketing for Boyce Machinery.

*Dale W. Roesener, Vice President, Fleet Management*, founded Southern Nevada Equipment Company in 1983 and served as its President and Chief Executive Officer until 1998 when he joined ICM as Senior Vice President, Secretary and Fleet Manager.

*Bradley W. Barber, Vice President, Rental Operations*, was promoted to Vice President of Rental Operations in February 2003. Prior to that, Mr. Barber served as Director of Rental Operations for Head and Engquist Equipment. Mr. Barber has previous experience in both outside sales and branch management for a regional equipment company.

*Bruce C. Bruckmann, Director*, is a Managing Director of BRS. He was an officer of Citicorp Venture Capital Ltd. from 1983 through 1994. Mr. Bruckmann is a director of HealthPlus Corporation, HealthEssentials, Inc., Anvil Knitwear, Inc., California Pizza Kitchen, Inc., Penhall International, Inc., Eurofresh, Inc., Mohawk Industries, Inc. and Town Sports International, Inc.

*Harold O. Rosser, Director*, is a Managing Director of BRS. He was an officer of Citicorp Venture Capital from 1987 through 1994. Mr. Rosser is a director of American Paper Group, Inc., Acapulco Restaurants, Inc., Penhall International, Inc., California Pizza Kitchen, Inc., O'Sullivan Industries, Il Fornaio (America) Corporation and McCormick & Schmick Restaurant Corporation.

*J. Rice Edmonds, Director*, is a Principal of BRS. Prior to joining BRS in 1996 he worked in the high yield finance group of Bankers Trust. Mr. Edmonds is a director of Acapulco Restaurants, Inc., Il Fornaio (America) Corporation and McCormick & Schmick Restaurant Corporation.

*John T. Sawyer, Director*, joined as a Director in September 2002. Mr. Sawyer is President of Penhall. He joined Penhall in 1978 as the Estimating Manager of the Anaheim Division. In 1980, Mr. Sawyer was appointed Manager of Penhall's National Contracting Division, and in 1984, he assumed the position of Vice President and became responsible for managing all construction services divisions. Mr. Sawyer has been President of Penhall since 1989.

*Keith E. Alessi, Director*, joined as a Director and Chairman of the Audit Committee in November 2002. Mr. Alessi is Chairman and Chief Executive Officer (and owner) of Lifestyles Improvement Centers LLC, a franchiser of hypnosis centers in the US and Canada. Mr. Alessi is also

an Adjunct Professor of Law at The Washington and Lee University School of Law and Adjunct Professor at The University of Michigan Graduate School of Business Administration. He is a director and the Chairman of the Audit Committee for both Town Sports International (New York), a chain of health clubs and MWI Veterinary Supply (Boise), a leading veterinary supply wholesaler. He is the former Chairman and CEO of Telespectrum Worldwide and Jackson Hewitt.

*Lawrence C. Karlson, Director*, joined as a Director in September 2002. Mr. Karlson has a Masters Degree in Business Administration from the Wharton School of Business. In 1983, Mr. Karlson formed Nobel Electronics, Inc. In 1986, Nobel Electronics was reverse-merged into Pharos AB and Mr. Karlson became President and Chief Executive Officer. In 1990 he was named Chairman. He retired in 1993. Mr. Karlson provides consulting services to a wide variety of business. He currently sits on the Board of Directors of numerous public and private companies.

## ITEM 11. EXECUTIVE COMPENSATION

The following table summarizes, for the periods indicated, the principal components of compensation for our Chief Executive Officer and the four highest compensated executive officers (collectively, the "named executive officers") for the year ended December 31, 2002.

**Summary Compensation Table**

Name and Principal Position	Annual Compensation		
	Salary (\$)	Bonus (\$)	Other Annual Compensation (\$)
John M. Engquist Chief Executive Officer, President and Director	500,000	62,674(a)	—
Gary W. Bagley Chairman and Director	200,000	—	28,345(b)
Robert W. Hepler Vice President	330,000	—	9,600(c)
Kenneth R. Sharp, Jr. Vice President	185,000	—	28,345(b)
William W. Fox Vice President	192,500	50,000(a)	9,000(c)

(a) Bonus earned upon achievement of performance objectives.

(b) Company contributions under non-qualified deferred compensation plan.

(c) Automobile allowances.

### Executive Employment Agreements

H&E assumed an employment agreement with each of Gary W. Bagley and Kenneth R. Sharp, Jr. dated as of February 4, 1998. Such agreements, as amended on May 26, 1999, as further amended on December 6, 1999 and June 14, 2002, provide for, among other things:



an initial term of employment expiring on the fifth anniversary of the date of the agreement, thereafter employment may be terminated by either party upon 30 days written notice;

- early termination by reason of Mr. Bagley's or Mr. Sharp's (as applicable) death or disability, by H&E for good cause, or upon Mr. Bagley's or Mr. Sharp's (as applicable) voluntary resignation with or without a good reason event;

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- a severance payment in the case of early termination by H&E for other than cause or a voluntary resignation, payable in regular installments of the base salary through the period ending on the later of (1) the fifth anniversary of the date of this agreement or (2) the last day of the noncompete period, plus a bonus payment pro rated based on the number of days worked during the year of termination;
  - a base salary of \$200,000 per year for Mr. Bagley and \$185,000 per year for Mr. Sharp with increases of 5% annually plus a bonus in such amount as may be proposed by the officers of H&E and approved annually by board of directors of H&E;
  - benefits, including medical, dental, life and disability insurance; and
  - confidentiality of information obtained during employment, non-competition and non-solicitation.

In connection with the merger, H&E Holdings assumed a liability for subordinated deferred compensation for Mr. Bagley and Mr. Sharp. The deferred compensation agreements provided, among other things, deferred signing bonuses in the amount of \$3,638,000 and \$1,882,000, which are included in deferred compensation accounts for Mr. Bagley and Mr. Sharp, respectively. As of December 31, 2002, the aggregate deferred compensation (including annual interest of \$890,000) was \$5,890,000.

H&E Holdings is obligated to pay Mr. Bagley and Mr. Sharp a cash payment in the amount equal to the then balance in their deferred compensation accounts 11 and one-half years after June 17, 2002. Payments may also be made upon the occurrence of certain events including, cash distributions on the Series D Preferred Units of H&E Holdings and an Approved Company Sale (as defined in the securityholders agreement).

In connection with the acquisition of ICM, H&E Equipment Services assumed a nonqualified employee deferred compensation plan under which certain employees had previously elected to defer a portion of their annual compensation. Participants in the plan can no longer defer compensation. Compensation deferred under the plan is payable upon the termination, disability, or death of the participants. The plan accumulates interest each year at a bank's prime rate in effect as of the beginning of January. This rate remains constant throughout the year. The effective rate for the 2002 plan year was 4.75 percent. The aggregate deferred compensation (including accrued interest of \$2,355,000) at December 31, 2002 was \$4,343,000.

On June 29, 1999, H&E, formerly Gulf Wide, entered into an employment agreement with John M. Engquist. Such agreement, as amended on August 10, 2001, provides for, among other things:

- an initial term of employment expiring on December 31, 2006; thereafter employment may be terminated by either party upon 30 days written notice,
- early termination by reason of Mr. Engquist's death or disability, by H&E for good cause, or upon Mr. Engquist's voluntary resignation with or without a constructive termination,
- a severance payment in the case of early termination by H&E for (x) other than cause or (y) a voluntary resignation other than due to a constructive termination, in an aggregate amount equal to (i) one year of Mr. Engquist's base salary plus an amount equal to his most recent annual bonus, payable in monthly installments through the one-year period commencing on the date of his termination, and (ii) that portion of Mr. Engquist's bonus that would have accrued at the end of the calendar year in which such termination occurred through the period beginning on the first day of such calendar year and ending on the date of his termination,
- a base salary of \$300,000 per year with increases of 5% annually and with an increase on August 1, 2001 to \$500,000 per year, plus a cash bonus of an amount up to \$500,000 per year as determined by Gulf Wide's board of directors, based upon the attainment by Gulf Wide of applicable performance targets for such year,
- welfare benefits, including medical, dental, life and disability insurance,

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- fringe benefits, including use of two automobiles and professional memberships, and
  - confidentiality of information obtained during employment, non-competition and nonsolicitation.

On August 3, 2001, the board of directors authorized H&E to pay Mr. Engquist supplemental bonuses of \$250,000 during calendar year 2001 and \$250,000 during calendar year 2002 (which was accrued as of December 31, 2002) which is in addition to any bonus Mr. Engquist is entitled to receive pursuant to the terms of his employment agreement.

#### **Compensation of Directors**

We reimburse directors for any out-of-pocket expenses incurred by them in connection with services provided in such capacity. In addition, we may compensate directors who are not our employees for services provided in such capacity.

#### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

H&E Holdings owns 100% of our limited liability company interests. The following tables set forth certain information with respect to the beneficial ownership of H&E Holdings' Common Units and Voting Preferred Units by: (1) each person or entity that is the beneficial owner of more than 5% of any class of the voting securities of H&E Holdings; (2) each named executive officer; (3) each of our directors; and (4) all of our directors and executive officers as a group. These limited liability company interests constituted 5% of each class of the total outstanding limited liability company interests in H&E Holdings.

### Common Units Beneficial Ownership Table

Name	Class A Common Units Beneficially Owned	Percentage of Class A Common Units Outstanding	Class B Common Units Beneficially Owned	Percentage of Class B Common Units Outstanding	Percentage of Combined Voting Power(1)
BRSEC Co-Investment, L.L.C.(2)	785,000.0	36.7%	—	—	24.7%
BRSEC Co-Investment II, L.L.C.(3)	1,245,000.0	58.3%	—	—	39.2%
Bruce C. Bruckmann(4)	2,030,000.0	95.0%	—	—	64.0%
Harold O. Rosser(5)	2,030,000.0	95.0%	—	—	64.0%
J. Rice Edmonds(6)	2,030,000.0	95.0%	—	—	64.0%
Gary W. Bagley(7)	—	—	85,813.7	4.1%	1.4%
Terence L. Eastman(7)	—	—	—	—	—
John M. Engquist(7)	—	—	1,170,300.0	56.4%	18.4%
Robert W. Hepler(7)	—	—	—	—	—
Dale W. Roesener(7)	—	—	164,325.6	7.9%	2.6%
Kenneth R. Sharp, Jr.(7)	—	—	44,561.6	2.1%	*
Don M. Wheeler(8)	—	—	263,735.7	12.7%	4.2%
Kristan Engquist Dunne(9)	—	—	74,700.0	3.6%	1.2%
All executive officers and directors as a group (12 persons)	2,030,000.0	95.0%	1,465,000.9	70.5%	87.1%

\* Less than 1%.

### Voting Preferred Units Beneficial Ownership Table

The holders of the Common Units listed in the Common Units Beneficial Ownership Table are also the holders of H&E Holdings' Voting Preferred Units. For ease of presentation we have not duplicated the names in the Voting Preferred Units Beneficial Ownership Table below and have presented the beneficial ownership information of such holders in the same order as it appears in the Common Units Beneficial Ownership Table. The numbers presented in the table below reflect the beneficial ownership of H&E Holdings' Voting Preferred Units and have been rounded to the nearest whole number. These limited liability company interests constituted 5% of each class of the total outstanding limited liability company interests in H&E Holdings as of the closing of the offering of senior subordinated and senior secured notes.

Series A Preferred Units Beneficially Owned	Percentage of Series A Preferred Units Outstanding	Series B Preferred Units Beneficially Owned	Percentage of Series B Preferred Units Outstanding	Series C Preferred Units Beneficially Owned	Percentage of Series C Preferred Units Outstanding	Series D Preferred Units Beneficially Owned	Percentage of Series D Preferred Units Outstanding	Percentage of Combined Voting Power <sup>(10)</sup>
10,500	95.0%	9,200	33.2%	20,815	24.6%	—	—	22.8%
—	—	10,882	36.9%	42,485	50.1%	17,200	32.9%	39.7%
10,500	95.0%	20,082	68.0%	63,300	74.7%	17,200	32.9%	62.5%
10,500	95.0%	20,082	68.0%	63,300	74.7%	17,200	32.9%	62.5%
—	—	—	—	—	—	—	—	—
—	—	—	—	3,500	4.1%	15,710	30.1%	10.8%
—	—	—	—	—	—	—	—	—
—	—	800	2.7%	1,607	1.9%	—	—	1.4%
—	—	—	—	—	—	—	—	—
—	—	5,400	18.3%	12,135	14.3%	10,390	19.9%	15.7%
—	—	1,756	6.0%	—	—	829	1.6%	1.5%
10,500	95.0%	20,882	70.8%	63,907	80.7%	32,910	63.0%	74.7%

- Each Class A Common Unit holder is entitled to two votes per Class A Common Unit held and each Class B Common Unit holder is entitled to one vote per Class B Common Unit held.
- The address of BRSEC Co-Investment, L.L.C. is c/o Bruckmann, Rosser, Sherrill & Co., Inc., 126 East 56th Street, 29th Floor, New York, New York 10022.
- The address of BRSEC Co-Investment II, L.L.C. is c/o Bruckmann, Rosser, Sherrill & Co., Inc., 126 East 56th Street, 29th Floor, New York, New York 10022.
- Represents common units held by BRSEC Co-Investment, L.L.C. and BRSEC Co-Investment II, L.L.C. Mr. Bruckmann is a managing director of Bruckmann, Rosser, Sherrill & Co., L.L.C., the manager of Bruckmann, Rosser, Sherrill & Co. II, L.P., which is the primary member of BRSEC Co-Investment II, L.L.C. Bruckmann, Rosser, Sherrill & Co., Inc. is the manager of Bruckmann, Rosser, Sherrill & Co., L.P., which is the primary member of BRSEC Co-Investment, L.L.C.
- Represents common units held by BRSEC Co-Investment, L.L.C. and BRSEC Co-Investment II, L.L.C. Mr. Rosser is a managing director of Bruckmann, Rosser, Sherrill & Co., L.L.C., the manager of Bruckmann, Rosser, Sherrill & Co. II, L.P., the primary member of BRSEC Co-Investment II, L.L.C. Bruckmann, Rosser, Sherrill & Co., Inc. is the manager of Bruckmann, Rosser, Sherrill & Co., L.P., the primary member of BRSEC Co-Investment, L.L.C.
- Represents common units held by BRSEC Co-Investment, L.L.C. and BRSEC Co-Investment II, L.L.C. Mr. Edmonds is a principal of Bruckmann, Rosser, Sherrill & Co., L.L.C., the manager of Bruckmann, Rosser, Sherrill & Co. II, L.P., which is the primary member of BRSEC Co-Investment II, L.L.C. Bruckmann, Rosser, Sherrill & Co., Inc. is the manager of Bruckmann, Rosser, Sherrill & Co., L.P., the primary member of BRSEC Co-Investment, L.L.C.
- Unless otherwise indicated, the address of each executive officer or director is c/o H&E Equipment Services L.L.C., 11100 Mead Road, Suite 200, Baton Rouge, Louisiana 70816.
- The address of Mr. Wheeler is 4899 West 2100 South, Salt Lake City, Utah 84120.
- The address of Ms. Engquist Dunne is 11100 Mead Road, 2nd Floor, Baton Rouge, Louisiana 70816.
- Each Voting Preferred Unit holder is entitled to one vote per Voting Preferred Unit held.

## ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

### Management Agreements and Transaction Fees

Each of H&E and ICM were acquired by affiliates of Bruckmann, Rosser, Sherrill & Co., Inc. ("BRS") in 1999, pursuant to separate recapitalizations. In connection with the recapitalizations of H&E and ICM, we entered into management agreements with each of BRS and Bruckmann, Rosser, Sherrill & Co., L.L.C. ("BRS L.L.C."), affiliates of BRS Equipment Company and BRSEC Co-Investment II, L.L.C. ("BRSEC Co-Investment II") pursuant to which BRS and BRS L.L.C. have agreed to provide certain advisory and consulting services to us, relating to business and organizational strategy, financial and investment management and merchant and investment banking. In exchange for such services we agreed to pay BRS and BRS L.L.C. (i) \$7.2 million of transaction fees in connection with the ICM and H&E recapitalizations, (ii) an annual fee during the term of these agreements equal to the lesser of \$2.0 million or 1.75% of our yearly EBITDA, excluding operating lease expense, plus all reasonable out-of-pocket fees and expenses and (iii) a transaction fee in connection with each material acquisition, divestiture or financing or refinancing we enter into in an amount equal to 1.25% of the aggregate value of such transaction plus all reasonable out-of-pocket fees and expenses.

### Contribution Agreement

The contribution agreement contains customary provisions for such agreements, including representations and warranties with respect to each of Gulf Wide and ICM equityholders, covenants with respect to the consummation of the combination of H&E and ICM and various closing conditions, including the execution of a registration rights agreement and securityholders agreement, and the consummation of this offering.

### Securityholders Agreement

In connection with the offering of senior subordinated and senior secured notes, H&E Holdings entered into a securityholders agreement with BRS Co-Investment, BRSEC Co-Investment II, certain members of management and other members of H&E Holdings. The securityholders agreement: (i) restricts the transfer of the equity interests of H&E Holdings; (ii) grants tag-along rights on certain transfers of the equity interests of H&E Holdings; (iii) requires the securityholders to consent to a sale of H&E Holdings to an independent third party if such sale is approved by the holders of a majority of the then-outstanding common equity interests held by BRSEC Co-Investment, L.L.C. ("BRS Co-Investment") and BRSEC Co-Investment II; and (iv) grants preemptive rights on certain issuances of the equity interests of H&E Holdings. The securityholders agreement will terminate upon a sale of H&E Holdings approved by the holders of a majority of the then-outstanding common equity interests held by BRS Co-Investment and BRSEC Co-Investment II.

### Registration Rights Agreement

In connection with the offering of senior subordinated and senior secured notes, H&E Holdings entered into a registration rights agreement with BRS Co-Investment, BRSEC Co-Investment II, certain members of management and other members of H&E Holdings. Pursuant to the terms of the registration rights agreement, the holders of a majority of the then-outstanding common equity interests held by BRS Co-Investment and BRSEC Co-Investment II have the right to require H&E Holdings, subject to certain conditions, to register any or all of their common equity interests under the Securities Act at H&E Holdings' expense. In addition, all holders of the common equity interests of H&E Holdings are entitled to request the inclusion of any common equity interests subject to the registration rights agreement in any registration statement at the expense of H&E Holdings whenever H&E Holdings proposes to register any of its common equity interests under the Securities Act. In

connection with all such registrations, H&E Holdings has agreed to indemnify all holders of its common equity interests against certain liabilities, including liabilities under the Securities Act.

### Limited Liability Company Agreement

In connection with the offering of senior subordinated and senior secured notes, BRS Co-Investment, BRSEC Co-Investment II, certain members of management and the other members of H&E Holdings entered into a limited liability company agreement of H&E Holdings. This operating agreement governs the relative rights and duties of the members of H&E Holdings.

**Membership Interests.** The ownership interests of the members in H&E Holdings consist of Preferred Units and Common Units. The Common Units represent the common equity of H&E Holdings and consist of Class A Common Units and Class B Common Units. The Preferred Units consist of Series A Preferred Units, Series B Preferred Units, Series C Preferred Units and Series D Preferred Units (the "Voting Preferred Units"). Each member is entitled to (x) two votes per Class A Common Unit held by such member, (y) one vote per Class B Common Unit held by such member and (z) one vote for each Voting Preferred Unit held by such member. Holders of the Preferred Units are entitled to return of capital contributions prior to any distributions made to holders of the Common Units.

**Distributions.** Subject to any restrictions contained in any agreements involving payments to third parties, the board of directors of H&E Holdings (the "Board") may make distributions, whether in available cash or other assets of H&E Holdings, at any time or from time to time in the following order of priority:

*First*, to the holders of Series A Preferred Units in proportion to and to the extent of the Series A Preferred Redemption Values (as defined and described in the limited liability company agreement) of such Series A Preferred Units.

*Second*, to the holders of Series B Preferred Units in proportion to and to the extent of the Series B Preferred Redemption Values (as defined and described in the limited liability company agreement) of such Series B Preferred Units.

*Third*, to the holders of Series C Preferred Units, in proportion to and to the extent of the Series C Preferred Redemption Values (as defined and described in the limited liability company agreement) of such Series C Preferred Units.

*Fourth*, to the holders of the Series D Preferred Units, in proportion to and to the extent of the Series D Preferred Redemption Values (as defined and described in the limited liability company agreement) of such Series D Preferred Units.

*Fifth*, pro rata to the holders of Common Units, based upon the number of Common Units held.

The limited liability company agreement places certain restrictions on the ability of H&E Holdings to make distributions attributable to the Preferred Units prior to June 30, 2022.

**Board of Directors.** Pursuant to the securityholders agreement, the holders of a majority of the common equity units held by BRS Co-Investment and BRSEC Co-Investment II designate a majority of the directors of the Board. The Board consists of "Class A Directors" and "Class B Directors." Each Class A Director is entitled to two votes and each Class B Director is entitled to one vote. The initial Board consists of three Class A Directors and two Class B Directors. The initial Class A Directors are Bruce C. Bruckmann, Harold O. Rosser and J. Rice Edmonds, and the initial Class B Directors are John M. Engquist and Gary W. Bagley. At no time will the authorized number of Class B Directors exceed that number which would provide all of the then authorized Class B Directors with a number of votes that exceeds 50% of the number of votes of the then authorized number of Class A Directors. The Class A Directors are elected by the members which own a majority of the number of votes of all

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Common Units then-outstanding. The Class B Directors are elected by the members which own a majority of the number of votes of all of the Voting Preferred Units then-outstanding.

### **The BRS Purchase**

In connection with the senior subordinated note offering, BRS was paid \$7.2 million by H&E Equipment Services on account of \$7.2 million of obligations payable to BRS and its affiliates in connection with the recapitalizations of H&E and ICM and BRS purchased a portion of the securities issued in the senior subordinated note offering. In connection with the senior subordinated note offering, BRS purchased notes having an accreted value of \$7.2 million and a corresponding pro rata share of the limited liability company interests included in the securities offered thereby.

### **Other Related Party Transactions**

We lease certain of our real estate facilities, charter an aircraft for business purposes and place a portion of our liability insurance through an agency in which John M. Engquist, our Chief Executive Officer and President, and Thomas R. Engquist, the father of John M. Engquist, have an economic interest. In 2002, our payments for such transactions totaled \$616,000, \$255,000 and \$3,096,000, respectively.

We lease certain of our facilities from entities controlled by Don M. Wheeler, an equityholder. In 2002, our lease payments to such entities totaled \$688,000.

We lease certain real estate from an entity controlled by Dale W. Roesener, an executive officer. In 2002, our lease payments to such entity totaled \$255,000.

We lease certain of our facilities from an equity owner and an employee. In 2002, our lease payments for these facilities totaled \$181,000.

In connection with the recapitalization of H&E in 1999, we entered into a consulting and non-competition agreement with Thomas R. Engquist, the father of John M. Engquist, our Chief Executive Officer and President, with a term of ten years. In exchange for providing consulting services, Mr. Engquist will receive an aggregate amount of \$3.0 million, to be paid in \$25,000 monthly increments.

The Company owed companies related through common ownership \$7,000 and \$3,207,000 at December 31, 2002 and 2001, respectively. The Company had no sales transactions with these affiliated companies during 2002 and 2001.

The Company rented equipment from an officer for \$462,000 and \$126,000 for the years ended December 31, 2001 and 2000, respectively. The equipment was purchased from the officer for \$3,000,000 during 2001.

The Company had a management agreement with a company related through common ownership, payable in the greater of \$500,000 or 1% of earnings before interest, taxes, depreciation and amortization. The total paid for the years ended December 31, 2002, 2001 and 2000, was \$670,000, \$530,000 and \$500,000, respectively.

In connection with the acquisition of ICM, the Company entered into a management agreement with an affiliate payable in the greater of \$2 million annually or 1.75% of annual earnings before interest, taxes, depreciation, and amortization, excluding operating lease expense, plus all reasonable out-of-pocket expenses. The total amount paid to the affiliate under the management agreement for 2002 was \$1,085,000.

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The Company has consulting and noncompetition agreements with two former stockholders of Coastal Equipment, Inc. acquired in 1999 for \$1,000,000, payable in four annual installments of \$250,000 beginning March 1, 2000.

We expensed \$237,000 and \$123,000 in 2002 to the deferred compensation accounts of Gary W. Bagley, our Chairman, and Kenneth R. Sharp, Jr., an executive officer, respectively.

## **ITEM 14. CONTROLS AND PROCEDURES**

- (a) Within the 90 days prior to the date of filing this Form 10-K, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's President and Chief Executive Officer along with the Company's Chief

Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures pursuant to Exchange Act Rule 13a-14. Based upon that evaluation, the Company's President and Chief Executive Officer along with the Company's Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective in timely alerting them to material information relating to the Company (including its consolidated subsidiaries) required to be included in the Company's periodic SEC filings.

- (b) There have been no significant changes in the Company's internal controls or in other factors which could significantly affect internal controls subsequent to the date the Company carried out its evaluation.

## ITEM 15. FINANCIAL STATEMENT SCHEDULES, REPORTS ON FORM 8-K, AND EXHIBITS

- (a) Document List

### 1. Financial Statements

The following consolidated financial statements of H&E Equipment Services L.L.C. are included in Part II, Item 8:

Independent Auditors' Report (KPMG LLP)  
Independent Auditor's Report (Hawthorn, Waymouth and Carroll L.L.P.)  
Consolidated balance sheets at December 31, 2001 and 2002  
Consolidated statements of operations for the years ended December 31, 2002, 2001 and 2000  
Consolidated statements of members' equity (deficit) for the years ended December 31, 2002, 2001 and 2000  
Consolidated statements of cash flows for the years ended December 31, 2002, 2001 and 2000  
Notes to consolidated financial statements

### 2. Financial statement schedules

#### Schedule II Valuation and Qualifying Accounts

All other schedules for which provision is made in the applicable accounting requirements of the Securities and Exchange Commission are not required or the required information has been included within the financial statements or the notes thereto.

- (b) Reports on Form 8-K

None

- (c) Exhibits:

- 3.1 Articles of Organization of Gulf Wide Industries, L.L.C.\*  
3.2 Amended and Restated Articles of Organization of Gulf Wide Industries, L.L.C.\*  
3.3 Amended Articles of Organization of Gulf Wide Industries, L.L.C., Changing Its Name to H&E Equipment Services L.L.C.\*  
3.4 Certificate of Incorporation of H&E Finance Corp.\*  
3.5 Articles of Incorporation of Great Northern Equipment, Inc.\*  
3.6 Articles of Incorporation of Williams Bros. Construction, Inc.\*  
3.7 Articles of Amendment to Articles of Incorporation of Williams Bros. Construction, Inc. Changing its Name to GNE Investments, Inc.\*  
3.8 Amended and Restated Operating Agreement of H&E Equipment Services L.L.C.\*  
3.9 Bylaws of H&E Finance Corp.\*  
3.10 Bylaws of Great Northern Equipment, Inc.\*  
3.11 Bylaws of Williams Bros. Construction, Inc.\*  
4.1 Indenture, among H&E Equipment Services L.L.C., H&E Finance Corp., the guarantors party thereto and The Bank of New York, dated as of June 17, 2002.\*  
4.2 Registration Rights Agreement, among H&E Equipment Services L.L.C., H&E Finance Corp., the guarantors party thereto, Credit Suisse First Boston Corporation, Bank of America Securities L.L.C. and Fleet Securities, Inc., dated as of June 17, 2002.\*  
10.1 Credit Agreement among Great Northern Equipment, Inc., H&E Equipment Services L.L.C., the other credit parties signatory thereto, General Electric Capital Corporation, Bank of America, N.A. and Fleet Capital Corporation, dated as of June 17, 2002.\*

- 10.2 Contribution Agreement and Plan of Reorganization, dated as of June 14, 2002, by and among H&E Holdings, L.L.C., BRSEC Co-Investment II, L.L.C.\*
- 10.3 Securityholders Agreement, dated as of June 17, 2002 by and among H&E Holdings L.L.C., BRSEC Co-Investment, L.L.C., BRSEC Co-Investment II, L.L.C., certain members of management and other members of H&E Holdings L.L.C.\*
- 10.4 Registration Rights Agreement, dated as of June 17, 2002 by and among H&E Holdings L.L.C., BRSEC Co-Investment, L.L.C., BRSEC Co-Investment II, L.L.C., certain members of management and other members of H&E Holdings L.L.C.\*
- 10.5 Management Agreement, dated May 26, 1999, by and between Bruckman, Rosser, Sherrill & Co., Inc. and ICM Equipment Company, L.L.C.\*
- 10.6 Management Agreement, dated as of August 10, 2001, by and among Bruckman, Rosser, Sherrill & Co., Inc., Head & Engquist Equipment, L.L.C. and Gulf Wide Industries, L.L.C.\*
- 10.7 First Amended and Restated Management Agreement, dated as of June 17, 2002, Bruckman, Rosser, Sherrill & Co., Inc., H&E Holdings, L.L.C. and H&E Equipment Services, L.L.C.\*
- 10.8 Employment Agreement, dated as of June 29, 1999, by and between Gulf Wide Industries, L.L.C., and John M. Engquist.\*

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- 10.9 First Amendment to the Employment Agreement, dated as of August 10, 2001, by and among Gulf Wide Industries, L.L.C. and John M. Engquist.\*
  - 10.10 Employment Agreement, dated as of February 4, 1998, by and between ICM Equipment Company, L.L.C., and Gary Bagley.\*
  - 10.11 First Amendment to the Employment Agreement, dated as of May 26, 1999, by and between ICM Equipment Company, L.L.C., and Gary Bagley.\*
  - 10.12 Second Amendment to the Employment Agreement, dated as of December 6, 1999, by and between ICM Equipment Company, L.L.C., and Gary Bagley.\*
  - 10.13 Third Amendment to the Employment Agreement, dated as of June 14, 2002, by and between ICM Equipment Company, L.L.C., and Gary Bagley.\*
  - 10.14 Employment Agreement, dated as of February 4, 1998, between ICM Equipment Company and Kenneth Sharp, Jr.\*
  - 10.15 First Amendment to the Employment Agreement, dated as of May 26, 1999, between ICM Equipment Company, L.L.C. and Kenneth Sharp, Jr.\*
  - 10.16 Second Amendment to the Employment Agreement, dated as of December 6, 1999, between ICM Equipment Company, L.L.C. and Kenneth Sharp, Jr.\*
  - 10.17 Third Amendment to the Employment Agreement, dated as of June 14, 2002, between ICM Equipment Company, L.L.C. and Kenneth Sharp, Jr.\*
  - 10.18 Deferred Compensation Agreement made and entered into as of June 17, 2002. by and between Gary Bagley and H&E Holdings, L.L.C.\*
  - 10.19 Deferred Compensation Agreement made and entered into as of June 17, 2002. by and between Kenneth Sharp, Jr. and H&E Holdings, L.L.C.\*
  - 10.20 Consulting and Noncompetition Agreement, dated as of June 29, 1999, between Head & Engquist Equipment, L.L.C. and Thomas R. Engquist.\*
  - 10.21 Purchase Agreement, among H&E Equipment Services L.L.C., H&E Finance Corp., the guarantors party thereto, Credit Suisse First Boston Corporation, Bank of America Securities L.L.C. and Fleet Securities, Inc. dated June 3, 2002\*
  - 10.22 Amendment No. 1 to Purchase Agreement, among H&E Equipment Services L.L.C., H&E Finance Corp., the guarantors party thereto, Credit Suisse First Boston Corporation, Bank of America Securities L.L.C. and Fleet Securities, Inc. dated June 17, 2002\*
  - 10.23 Investor Rights Agreement by and among H&E Holdings, L.L.C. BRSEC Co-Investment, L.L.C., BRSEC Co-Investment II, L.L.C. and Credit Suisse First Boston Corporation, dated June 17, 2002.\*
  - 10.24 Security Agreement, dated June 17, 2002, between H&E Equipment Services L.L.C. and The Bank of New York.\*\*
  - 10.25 Pledge Agreement, dated June 17, 2002, between H&E Equipment Services L.L.C. and The Bank of New York.\*\*
  - 10.26 Trademark Security Agreement, dated June 17, 2002, between H&E Equipment Services L.L.C. and The Bank of New York.\*\*
  - 10.27 Security Agreement, dated June 17, 2002, between H&E Finance Corp. and The Bank of New York.\*\*

- 10.28 Security Agreement, dated June 17, 2002, between GNE Investments, Inc. and The Bank of New York.\*\*
- 10.29 Pledge Agreement, dated June 17, 2002, between GNE Investments, Inc. and The Bank of New York.\*\*
- 10.30 Security Agreement, dated June 17, 2002, between Great Northern Equipment, Inc. and The Bank of New York.\*\*
- 10.31 Trademark Security Agreement, dated June 17, 2002, between Great Northern Equipment, Inc. and The Bank of New York.\*\*
- 10.32 Patent Security Agreement, dated June 17, 2002, between Great Northern Equipment, Inc. and The Bank of New York.\*\*
- 21.1 Subsidiaries of the registrant.\*

\* Incorporated by reference to the Registrant's Registration Statements on Form S-4, File No.'s 333-99587 and 333-99589.

\*\* Filed herewith

**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 on April 14, 2003.

H&E EQUIPMENT SERVICES L.L.C.

By: /s/ JOHN M. ENGQUIST

\_\_\_\_\_  
John M. Engquist  
Its: President and Chief Executive Officer

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

Signature	Capacity	Date
By: /s/ GARY W. BAGLEY _____ Gary W. Bagley	Chairman and Director	April 14, 2003
By: /s/ JOHN M. ENGQUIST _____ John M. Engquist	President, Chief Executive Officer and Director	April 14, 2003
By: /s/ LINDSAY C. JONES _____ Lindsay C. Jones	Chief Financial Officer	April 14, 2003
By: /s/ BRUCE C. BRUCKMANN _____ Bruce C. Bruckmann	Director	April 14, 2003
By: /s/ HAROLD O. ROSSER _____ Harold O. Rosser	Director	April 14, 2003
By: /s/ J. RICE EDMONDS _____ J. Rice Edmonds	Director	April 14, 2003
By: /s/ JOHN T. SAWYER _____ John T. Sawyer	Director	April 14, 2003
By: /s/ KEITH E. ALESSI _____ Keith E. Alessi	Director	April 14, 2003
By: /s/ LAWRENCE C. KARLSON _____ Lawrence C. Karlson	Director	April 14, 2003

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**CERTIFICATIONS**

I, John M. Engquist, President and Chief Executive Officer of H&E Equipment Services L.L.C., certify that:

1. I have reviewed this annual report on Form 10-K of H&E Equipment Services L.L.C.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - (a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - (c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
  - (a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: April 14, 2003

By: /s/ JOHN M. ENGQUIST

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John M. Engquist  
President and Chief Executive Officer

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**CERTIFICATIONS**

I, Lindsay C. Jones, Chief Financial Officer of H&E Equipment Services L.L.C., certify that:

1. I have reviewed this annual report on Form 10-K of H&E Equipment Services L.L.C.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
- 4.



The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

- (a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
- (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
- (c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

- (a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: April 14, 2003

By: /s/ LINDSAY C. JONES

\_\_\_\_\_  
Lindsay C. Jones  
Chief Financial Officer

**SCHEDULE II: VALUATION AND QUALIFYING ACCOUNTS  
FOR THE YEARS ENDED DECEMBER 31, 2002, 2001 AND 2000**

(Dollars in thousands)

Description	Balance at Beginning of Year	Additions Charges to Costs and Expenses	Deductions	Impact of Acquisition	Balance at End of Year
<b>Year Ended December 31, 2002</b>					
Allowance for doubtful accounts receivable	\$ 708	\$ 1,517	\$ (1,524)	\$ 2,908	\$ 3,609
Allowance for inventory obsolescence	533	121	(6)	491	1,139
	<u>\$ 1,241</u>	<u>\$ 1,638</u>	<u>\$ (1,530)</u>	<u>\$ 3,399</u>	<u>\$ 4,748</u>
<b>Year Ended December 31, 2001</b>					
Allowance for doubtful accounts receivable	\$ 708	\$ 556	\$ (556)	—	\$ 708
Allowance for inventory obsolescence	291	271	(29)	—	533
	<u>\$ 999</u>	<u>\$ 827</u>	<u>\$ (585)</u>	<u>—</u>	<u>\$ 1,241</u>
<b>Year Ended December 31, 2000</b>					
Allowance for doubtful accounts receivable	\$ 708	\$ 708	\$ (708)	—	\$ 708
Allowance for inventory obsolescence	213	89	(11)	—	291
	<u>\$ 921</u>	<u>\$ 797</u>	<u>\$ (719)</u>	<u>—</u>	<u>\$ 999</u>

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H&E EQUIPMENT SERVICES L.L.C. SECURITY AGREEMENT  
(IN FAVOR OF THE COLLATERAL AGENT)

THIS SECURITY AGREEMENT, dated as of June 17, 2002 (this "SECURITY AGREEMENT") is entered into by and between H&E Equipment Services L.L.C., a Louisiana limited liability company (the "GRANTOR"), and The Bank of New York, in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among the Grantor, H&E Finance Corp., a Delaware corporation (together with Grantor, each individually an "ISSUER" and collectively the "ISSUERS"), the guarantors named therein and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain H&E Equipment Services L.L.C. Security Agreement dated as of the date hereof by the Grantor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT") (such document, as amended, modified or supplemented from time to time, the "PRIORITY SECURITY AGREEMENT"), the Grantor has granted to the Credit Agreement Agent a first-priority lien and security interest in the Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "CREDIT AGREEMENT") among the Grantor, Great Northern Equipment, Inc., a Montana corporation (together with the Grantor, each individually, a "BORROWER", and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor, pursuant to the terms of the Indenture, has agreed to grant the Collateral Agent a continuing Lien on the Collateral (as defined below) and a security interest in the Collateral in accordance with this Security Agreement; and
- (D) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Security Agreement as security for the Secured Obligations upon any and all of the Collateral are subordinate in ranking to all present and future Priority Liens upon any and all of the Collateral; and (ii) the Note Liens upon any and all Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor hereby agrees with the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations (as defined below) as follows:

1. DEFINED TERMS

(a) Unless otherwise defined herein, terms defined in the Indenture and used herein have the meanings given to them in the Indenture. All other undefined terms contained in this Security Agreement, unless the context indicates otherwise, have the meanings provided for by Article 9 of the New York Uniform Commercial Code (the "CODE") to the extent the same are used or defined therein.

(b) The following shall have (unless otherwise provided elsewhere in this Security Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"ACCOUNT DEBTOR" means any Person who may become obligated to an Obligor under, with respect to, or on account of, an Account, Chattel Paper or General Intangibles (including a payment

intangible);

"ACCOUNTS" means all "accounts," as such term is defined in the Code, now owned or hereafter acquired by any Obligor including (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper, or Instruments), (including any such obligations that may be characterized as an account or contract right under the Code), (b) all of each Obligor's rights in, to and under all purchase orders or receipts for goods or services, (c) all of each Obligor's rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to any Obligor for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Obligor or in connection with any other transaction (whether or not yet earned by performance on the part of such Obligor), (e) all health care insurance receivables and (f) all collateral security of any kind, given by any Account Debtor or any other Person with respect to any of the foregoing;

"CHATEL PAPER" means any "chattel paper," as such term is defined in the Code, including electronic chattel paper, now owned or hereafter acquired by any Obligor;

"COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"CONTRACTS" means all "contracts," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, in any event, including all contracts, undertakings, or agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which any Obligor may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account;

"COPYRIGHT LICENSE" means any and all rights now owned or hereafter acquired by any Obligor under any written agreement granting any right to use any Copyright or Copyright registration;

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"COPYRIGHT SECURITY AGREEMENTS" means the Copyright Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"COPYRIGHTS" means all of the following now owned or hereafter acquired by any Obligor: (a) all copyrights and General Intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof;

"DEPOSIT ACCOUNTS" means all "deposit accounts" as such term is defined in the Code, now or hereafter held in the name of any Obligor;

"DOCUMENTS" means all "documents," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located;

"EQUIPMENT INVENTORY" means Inventory of any Borrower consisting of equipment held for sale or lease to third parties and equipment while on lease to third parties;

"FIXTURES" means all "fixtures" as such term is defined in the Code, now owned or hereafter acquired by any Obligor;

"GENERAL INTANGIBLES" means all "general intangibles," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, including all right, title and interest that such Obligor may now or hereafter have in or under any Contract, all payment intangibles, customer lists, Licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark License), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including without limitation all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Obligor or any computer bureau or service company from time to time acting for such Obligor;

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"GOODS" means all "goods" as defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, including embedded software to the extent included in "goods" as defined in the Code, manufactured homes, standing timber that is cut and removed for sale and unborn young of animals;

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"INSTRUMENTS" means any "instrument," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper;

"INTELLECTUAL PROPERTY" means any and all Licenses, Patents, Copyrights, Trademarks, and the goodwill associated with such Trademarks;

"INVENTORY" means all "inventory," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Obligor for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind, nature or description used or consumed or to be used or consumed in such Obligor's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software;

"INVESTMENT PROPERTY" means all "investment property" as such term is defined in the Code now owned or hereafter acquired by any Obligor, wherever located, including (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (ii) all securities entitlements of any Obligor, including the rights of any Obligor to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account; (iii) all securities

accounts of any Obligor; (iv) all commodity contracts of any Obligor; and (v) all commodity accounts of any Obligor;

"LETTER-OF-CREDIT RIGHTS" means "letter-of-credit rights" as such term is defined in the Code, now owned or hereafter acquired by any Obligor, including rights to payment or performance under a letter of credit, whether or not such Obligor, as beneficiary, has demanded or is entitled to demand payment or performance;

"LICENSE" means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by any Obligor;

"PATENT LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right with respect to any invention on which a Patent is in existence;

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"PATENT SECURITY AGREEMENTS" means the Patent Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"PATENTS" means all of the following in which any Obligor now holds or hereafter acquires any interest: (a) all letters patent of the United States or of any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or any other country, and (b) all reissues, continuations, continuations-in-part or extensions thereof;

"P&E" means all "equipment," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located and, in any event, including all such Obligor's machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto. P&E excludes Equipment Inventory and Fixtures;

"PROCEEDS" means "proceeds," as such term is defined in the Code, including (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Obligor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to any Obligor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting under color of governmental authority), (c) any claim of any Obligor against third parties (i) for past, present or future infringement of any Patent or Patent License, or (ii) for past, present or future infringement or dilution of any Copyright, Copyright License, Trademark or Trademark License, or for injury to the goodwill associated with any Trademark or Trademark License, (d) any recoveries by any Obligor against third parties with respect to any litigation or dispute concerning any of the Collateral, including claims arising out of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral, (e) all amounts collected on, or distributed on account of, other Collateral, including dividends, interest, distributions and Instruments with respect to Investment Property and pledged Stock, and (f) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition of Collateral and all rights arising out of Collateral;

"SECURED OBLIGATIONS" means all liability of the Grantor, whenever incurred or arising, under, for or in respect of the Notes, the Guarantees and any and all other present and future Note Obligations;

"SPECIFIED PRIORITY LIEN" means the Lien on the Collateral granted by the Grantor to the Credit Agreement Agent for the benefit of the Lenders under the Priority Security Agreement which Lien has priority to the Lien hereof to the extent and on the terms set forth in Article 10 of the Indenture;

"STOCK" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934);

"SUPPORTING OBLIGATIONS" means all "supporting obligations" as such term is defined in the Code, including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments or Investment Property;

"TRADEMARK SECURITY AGREEMENTS" means the Trademark Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"TRADEMARK LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right to use any Trademark; and

"TRADEMARKS" means all of the following now owned or hereafter existing, adopted or acquired by any Obligor: (a) all trademarks, trade names, limited liability company names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, (b) all reissues, extensions or renewals thereof, and (c) all goodwill associated with or symbolized by any of the foregoing.

## 2. GRANT OF LIEN

- (a) To secure the prompt and complete payment, performance and observance of all of the Secured Obligations, the Grantor hereby grants, assigns, conveys, mortgages, pledges, hypothecates and transfers to the Trustee as the Collateral Agent for the benefit of all of the present and future Holders of Secured Obligations, a Lien upon all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of the Grantor (including under any trade names, styles or derivations thereof), and whether owned or consigned by

or to, or leased from or to the Grantor, and regardless of where located (all of which being hereinafter collectively referred to as the "COLLATERAL"), including:

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Documents;

- (iv) all General Intangibles (including payment intangibles and software, but excluding any Contract that by its terms prohibits any Lien, where such prohibition is effective under applicable law, including Sections 9-406 and 9-408 of the Code);
- (v) all Goods (including Inventory, P&E and Fixtures);
- (vi) all Instruments;
- (vii) all Investment Property;
- (viii) all Deposit Accounts;
- (ix) all money, cash or cash equivalents of the Grantor;
- (x) all Supporting Obligations and all Letter-of-Credit Rights of the Grantor;
- (xi) all commercial tort claims; and
- (xii) to the extent not otherwise included, all Proceeds, tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing;

PROVIDED, that the Collateral shall not include any property which is an Excluded Asset for as long as such property is an Excluded Asset, but if any such property at any time ceases to be an Excluded Asset, it shall immediately and automatically become part of the Collateral without need for any additional grant of a security interest therein.

- (b) In addition, to secure the prompt and complete payment, performance and observance of the Secured Obligations and in order to induce the Trustee and the Initial Purchasers as aforesaid, the Grantor hereby grants to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, a right of setoff against the property of the Grantor held by the Credit Agreement Agent, the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, consisting of property described above in Section 2(a) now or hereafter in the possession or custody of or in transit to the Credit Agreement Agent, the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, for any purpose, including safekeeping, collection or pledge, for the account of the Grantor, or as to which the Grantor may have any right or power.

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### 3. THE COLLATERAL AGENT'S RIGHTS; LIMITATIONS ON THE COLLATERAL AGENT'S OBLIGATIONS

- (a) It is expressly agreed by the Grantor that, anything herein to the contrary notwithstanding, the Grantor shall remain liable under each of its Contracts and each of its Licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Trustee, the Collateral Agent nor any present or future Holder of Secured Obligations shall have any obligation or liability under any Contract or License by reason of or arising out of this Security Agreement or the granting herein of a Lien thereon or the receipt by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations of any payment relating to any Contract or License pursuant hereto. Neither the Trustee, the Collateral Agent nor any present or future Holder of Secured Obligations shall be required or obligated in any manner to perform or fulfill any of the obligations of the Grantor under or pursuant to any Contract or License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or License, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.
- (b) Subject to Article 10 of the Indenture, the Collateral Agent may at any time after an Event of Default shall have occurred and be continuing (or if any rights of set-off (other than set-off against an Account arising under the Contract giving rise to the same Account) or



contra accounts may be asserted with respect to the following), without prior notice to the Grantor, notify Account Debtors and other Persons obligated on the Collateral that the Collateral Agent has a security interest therein, and that payments shall be made directly to the Collateral Agent. Upon the request of the Collateral Agent, the Grantor shall notify Account Debtors and other Persons obligated on the Collateral. Once any such notice has been given to any Account Debtor or other Person obligated on such Collateral, the Grantor shall not give any contrary instructions to such Account Debtor or other such Person without the Collateral Agent's prior written consent.

- (c) Subject to Article 10 of the Indenture, the Collateral Agent may at any time in the name of the Grantor or if an Event of Default shall have occurred and be continuing, in the Collateral Agent's own name, or in the name of a nominee of the Collateral Agent, communicate (by mail, telephone, facsimile or otherwise) with Account Debtors, parties to Contracts, obligors in respect of Instruments and obligors in respect of Chattel Paper and/or payment intangibles to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount and terms of, and any other matter relating to, any such Accounts, Contracts, Instruments or Chattel Paper and/or payment intangibles. If a Default or Event of Default shall have occurred and be continuing, the Grantor, at its own expense, shall cause the independent certified public accountants then engaged by the Grantor to prepare and deliver to the Collateral Agent at any time and from time to time promptly upon the Collateral Agent's request the following reports with respect to the Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as the Collateral Agent may request. The Grantor, at its own expense, shall deliver to the Collateral Agent the results of each physical verification, if any, which the Grantor may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory.

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#### 4. REPRESENTATIONS AND WARRANTIES

The Grantor represents and warrants that:

- (a) The Grantor has rights in and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder free and clear of any and all Liens other than Permitted Liens (which Permitted Liens include the Specified Priority Lien).
- (b) No effective security agreement, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is on file or of record in any public office, except such as may have been filed (i) by the Grantor in favor of the Credit Agreement Agent pursuant to the Credit Agreement or the other Priority Lien Documents; (ii) by the Grantor in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations pursuant to this Security Agreement or the other Note Documents; and (iii) in connection with any other Permitted Liens pursuant to the Indenture.
- (c) This Security Agreement is effective to create a valid and continuing Lien on and, upon the filing of the appropriate financing statements in the filing offices listed on Schedule I hereto, a perfected Lien in favor of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, on the Collateral with respect to which a Lien may be perfected by filing pursuant to the Code. Such Lien is prior to all other Liens, except Priority Liens and Permitted Liens that would be prior to Liens in favor of the Collateral Agent as a matter of law, and is enforceable as such as against any and all creditors of and purchasers from the Grantor (other than purchasers and lessees of Inventory in the ordinary course of business). All action by the Grantor reasonably necessary or desirable to protect and perfect such Lien on each item of the Collateral has been duly taken.
- (d) Schedule II hereto lists all Instruments, Letter-of-Credit Rights and Chattel Paper of the Grantor. All action by the Grantor necessary or desirable to protect and perfect the Lien of the Collateral Agent on each item set forth on Schedule II (including the delivery of all originals thereof to the Collateral Agent and the legending of all Chattel Paper as required by Section 5(b) hereof; PROVIDED that prior to the Discharge of Priority Lien Indebtedness, such items need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent) has been duly taken. The Lien of the

Collateral Agent for the benefit of the present and future Holders of Secured Obligations, on the Collateral listed on Schedule II hereto is prior to all other Liens, except for Specified Priority Liens and Permitted Liens that would be prior to the Liens in favor of the Collateral Agent as a matter of law, and is enforceable as such against any and all creditors of and purchasers from the Grantor.

- (e) The Grantor's name as it appears in official filings in the state of its incorporation or other organization, the type of entity of the Grantor (including corporation, partnership, limited partnership or limited liability company), organizational identification number issued by the Grantor's state of incorporation or organization or a statement that no such number has been issued, the Grantor's state of organization or incorporation, the location of the Grantor's chief executive office, principal place of business, offices, all warehouses and premises where Collateral is stored or located, and the locations of all of its books and records concerning the Collateral are set forth on Schedule III hereto.

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- (f) With respect to the Accounts, (i) they represent bona fide sales of Inventory or rendering of services to Account Debtors in the ordinary course of the Grantor's business and are not evidenced by a judgment, Instrument or Chattel Paper; (ii) except as permitted under the Credit Agreement, there are no setoffs, claims or disputes existing or asserted with respect thereto and the Grantor has not made any agreement with any Account Debtor for any extension of time for the payment thereof, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance allowed by the Grantor in the ordinary course of its business for prompt payment and disclosed to the Collateral Agent; (iii) to the Grantor's knowledge, there are no facts, events or occurrences which are not permitted under the Credit Agreement which in any way impair the validity or enforceability thereof or could reasonably be expected to reduce the amount payable thereunder as shown on the Grantor's books and records and any invoices and statements delivered to the Collateral Agent with respect thereto; and (iv) the Grantor has not received any notice of proceedings or actions which are threatened or pending against any Account Debtor which might result in any adverse change in such Account Debtor's financial condition. Further with respect to the Accounts (x) the amounts shown on all invoices, statements and collateral reports which may be delivered to the Credit Agreement Agent or the Collateral Agent with respect thereto are actually and absolutely owing to the Grantor as indicated thereon and are not in any way contingent; (y) no payments have been or shall be made thereon except payments immediately delivered to the applicable Blocked Accounts, to Credit Agreement Agent or to the Collateral Agent; and (z) to the Grantor's knowledge, all Account Debtors have the capacity to contract.
- (g) With respect to any Inventory, (i) such Inventory is located at one of the Grantor's locations set forth on Schedule III hereto, PROVIDED that upon 15 days' prior written notice to the Collateral Agent and upon the Collateral Agent having filed UCC-1 financing statements, the Grantor may amend Schedule III; (ii) no Inventory is now, or shall at any time or times hereafter be stored at any other location without the Collateral Agent's prior consent, which shall not be unreasonably withheld, and if the Collateral Agent gives such consent, the Grantor will concurrently therewith obtain, to the extent required by the Indenture, bailee, landlord and mortgagee agreements; (iii) the Grantor has good, indefeasible and merchantable title to such Inventory and such Inventory is not subject to any Lien or security interest or document whatsoever except for the Priority Liens, the Lien granted to the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, and Permitted Liens pursuant to the Indenture; (iv) such Inventory is not subject to any licensing, patent, royalty, trademark, tradename or copyright agreements with any third parties which would require any consent of any third party upon sale or disposition of that Inventory or the payment of any monies to any third party as a precondition of such sale or other disposition; and (v) the completion of manufacture, sale or other disposition of such Inventory by the Collateral Agent following an Event of Default shall not require the consent of any Person other than as provided in the Indenture and shall not constitute a breach or default under any contract or agreement to which the Grantor is a party or to which such property is subject.
- (h) The Grantor has no interest in, or title to, any Patent, Trademark or

Copyright except as set forth in Schedule IV hereto. This Indenture is effective to create a valid and continuing Lien on and, upon filing of the Copyright Security Agreements with the United States Copyright Office and filing of the Patent Security Agreements and the Trademark Security Agreements with the United States Patent and Trademark Office, perfected Liens in favor of the Collateral Agent on the Grantor's Patents, Trademarks

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(other than state registered trademarks) and Copyrights and such perfected Liens are enforceable as such as against any and all creditors of and purchasers from the Grantor. Upon filing of the Copyright Security Agreements with the United States Copyright Office and filing of the Patent Security Agreements and the Trademark Security Agreements with the United States Patent and Trademark Office and the filing of appropriate financing statements listed on Schedule I hereto, all action necessary or desirable to protect and perfect the Collateral Agent's Lien on the Grantor's Patents, Trademarks (other than state registered trademarks) or Copyrights shall have been duly taken.

- (i) The Grantor does not hold for sale or lease or lease as lessor any goods that are covered by a certificate of title statute of any state other than goods of a kind that it is in the business of selling.
- (j) All motor vehicles owned by the Grantor which are P&E are listed on Schedule V hereto, by model, model year and vehicle identification number ("VIN") except in respect to any vehicles which are Excluded Assets. The Grantor shall provide notice to the Collateral Agent of, and deliver to the Collateral Agent motor vehicle title certificates for, all motor vehicles that are P&E and that are covered by a certificate of title from time to time owned by it, and shall cause such title certificates to be filed (with the Collateral Agent's lien noted thereon) in the appropriate state motor vehicle filing office; PROVIDED that prior to the Discharge of Priority Lien Indebtedness, such motor vehicle title certificates need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent.

## 5. COVENANTS

The Grantor covenants and agrees with the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, that from and after the date of this Security Agreement and until the date of termination of the Liens and this Security Agreement:

- (a) Further Assurances: Pledge of Instruments; Chattel Paper.
  - (i) At any time and from time to time, upon the written request of the Collateral Agent and at the sole expense of the Grantor, the Grantor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as the Collateral Agent may deem desirable to obtain the full benefits of this Security Agreement and of the rights and powers herein granted, including (A) using its best efforts to secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of the Collateral Agent of any License or Contract held by the Grantor and to enforce the security interests granted hereunder; and (B) filing any financing or continuation statements under the Uniform Commercial Code with respect to the Liens granted hereunder or under the Indenture or any other Note Document as to those jurisdictions that are not Uniform Commercial Code jurisdictions.
  - (ii) Unless the Collateral Agent shall otherwise consent in writing (which consent may be revoked), then upon, and concurrently with, the discharge of Priority Lien Indebtedness, without notice or demand, the Grantor shall deliver to the Collateral Agent all Collateral consisting of negotiable Documents, certificated securities, Chattel Paper and Instruments (in each case, accompanied by stock

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powers, allonges or other instruments of transfer executed in blank) promptly after such the Grantor receives the same.

- (iii) The Grantor shall obtain or use its commercially reasonable best efforts to obtain waivers or subordinations of Liens from landlords and mortgagees, and the Grantor shall in all instances obtain signed acknowledgements of the Collateral Agent's Liens from bailees having possession of any of the Grantor's Goods that they hold for the benefit of Credit Agreement Agent or the Collateral Agent.
- (iv) The Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code or such jurisdiction; or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Grantor is an organization, the type of organization and any organization identification number issued to the Grantor; and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Grantor agrees to furnish any such information to the Collateral Agent promptly upon request. The Grantor also ratifies its authorization for the Collateral Agent to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.
- (v) The Grantor shall promptly, and in any event within two (2) Business Days after the same is acquired by it, notify the Collateral Agent of any commercial tort claim (as defined in the Code) acquired by it and unless otherwise consented by Credit Agreement Agent and the Collateral Agent, the Grantor shall enter into a supplement to this Security Agreement, granting to the Collateral Agent a Lien in such commercial tort claim.

(b) Maintenance of Records

The Grantor shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, including a record of any and all payments received and any and all credits granted with respect to the Collateral and all other dealings with the Collateral. The Grantor shall mark its books and records pertaining to the Collateral to evidence this Security Agreement and the Liens granted hereby. If in accordance with, and to the extent consistent with, the terms of the Indenture, the Grantor retains possession of any Chattel Paper or Instruments with the Collateral Agent's consent, such Chattel Paper and Instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of General Electric Capital Corporation, as Agent, for the benefit of Agent and certain Lenders and of The Bank of New York, as the Collateral Agent, for the benefit of the Collateral Agent and certain holders of Senior Notes."

(c) Covenants Regarding Patent, Trademark and Copyright Collateral

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- (i) The Grantor shall notify the Collateral Agent immediately if it knows or has reason to know that any application or registration relating to any Patent, Trademark or Copyright (now or hereafter existing) may become abandoned or dedicated, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding the Grantor's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same.
- (ii) In no event shall the Grantor, either directly or through any agent, employee, licensee or designee, file an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency without giving

the Collateral Agent prior written notice thereof, and, upon request of the Collateral Agent, the Grantor shall execute and deliver any and all Patent Security Agreements, Copyright Security Agreements or Trademark Security Agreements as the Collateral Agent may request to evidence the Collateral Agent's Lien on such Patent, Trademark or Copyright, and the General Intangibles of the Grantor relating thereto or represented thereby.

- (iii) The Grantor shall take all actions necessary or requested by the Collateral Agent to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of the Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless the Grantor shall determine that such Patent, Trademark or Copyright is not material to the conduct of its business.
- (iv) In the event that any of the Patent, Trademark or Copyright Collateral is infringed upon, or misappropriated or diluted by a third party, the Grantor shall notify the Collateral Agent promptly after the Grantor learns thereof. The Grantor shall, unless it shall reasonably determine that such Patent, Trademark or Copyright Collateral is in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as the Collateral Agent shall deem appropriate under the circumstances to protect such Patent, Trademark or Copyright Collateral.

(d) Indemnification

In any suit, proceeding or action brought by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations relating to any Collateral for any sum owing with respect thereto or to enforce any rights or claims with respect thereto, the Grantor will save, indemnify and keep the Trustee, the Collateral Agent and the present and future Holders of Secured Obligations harmless from and against all reasonable expense (including reasonable attorneys' fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the Account Debtor or other Person obligated on the Collateral, arising out of a breach by the Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to, or in favor of, such obligor or

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its successors from the Grantor, except in the case of the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, to the extent such expense, loss or damage is attributable solely to the gross negligence or willful misconduct of the Trustee, the Collateral Agent or such present or future Holder of Secured Obligations as finally determined by a court of competent jurisdiction. All such obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations.

(e) Compliance with Terms of Accounts, etc.

In all material respects, the Grantor will perform and comply with all obligations in respect of the Collateral and all other agreements to which it is a party or by which it is bound relating to the Collateral.

(f) Limitation on Liens on Collateral

The Grantor will not create, permit or suffer to exist, and will defend the Collateral against, and take such other action as is necessary to remove, any Lien on the Collateral except Permitted Liens (including Specified Priority Liens), and will defend the right, title and interest of the Trustee, the Collateral Agent and the present and future Holders of Secured Obligations in and to any of the Grantor's rights under the Collateral against the claims and demands of all Persons whomsoever.

(g) Limitations on Disposition

The Grantor will not sell, license, lease, transfer or otherwise dispose of any of the Collateral, or attempt or contract to do so except as permitted by the Indenture.

(h) Notices

The Grantor will advise the Collateral Agent promptly, in reasonable detail, (i) of any Lien (other than Permitted Liens) or claim made or asserted against any of the Collateral; and (ii) of the occurrence of any other event which would have a material adverse effect on the aggregate value of the Collateral or on the Liens created hereunder or under the Indenture or any other Note Document.

(i) Further Identification of Collateral

The Grantor will, if so requested by the Collateral Agent, furnish to the Collateral Agent, as often as the Collateral Agent requests, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in such detail as the Collateral Agent may specify.

(j) Good Standing Certificates

At the request of the Collateral Agent, but not more frequently than once during each calendar quarter, the Grantor shall, unless the Collateral Agent shall otherwise consent, provide to the Collateral Agent a certificate of good standing from its state of incorporation or organization.

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(k) No Reincorporation

Without limiting the prohibitions on Change of Control involving the Grantor contained in the Indenture, the Grantor shall not reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof without the prior written consent of the Collateral Agent.

(l) Terminations; Amendments Not Authorized

The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of the Collateral Agent and agrees that it will not do so without the prior written consent of the Collateral Agent, subject to the Grantor's rights under Section 9-509(d)(2) of the Code.

(m) Authorized Terminations

All security interests granted herein shall continue until released in accordance with the Indenture.

(n) Government Contracts

The Grantor agrees that if they are a party to any contract or agreement with any Governmental Authority they will, if requested by the Collateral Agent, take such actions as may be necessary to comply with the Federal Assignment of Claims Act, as amended (31 U.S.C. Section 3727) or any similar state or local law pursuant to which the consideration due the Grantor thereunder is \$3,000,000 or more in the aggregate.

6. THE COLLATERAL AGENT'S APPOINTMENT AS ATTORNEY-IN-FACT

On the Closing Date, the Grantor shall execute and deliver to the Collateral Agent powers of attorney (collectively, the "POWER OF ATTORNEY") substantially in the forms attached hereto as Exhibit A-1 and A-2, respectively. The powers of attorney granted pursuant to the Power of Attorney are powers coupled with an interest and shall be irrevocable until the payment and performance in full of the Secured Obligations. The powers conferred on the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, under the Power of Attorney are solely to protect the Collateral Agent's interests (for the benefit of the present and future Holders of Secured Obligations) in the Collateral and shall not

impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent agrees that (a) except for the powers granted in clause (h) of the Power of Attorney, it shall not exercise any power or authority granted under the Power of Attorney unless an Event of Default has occurred and is continuing, (b) the exercise of any power or authority granted under the Power of Attorney shall be subject to Article 10 of the Indenture, and (c) the Collateral Agent shall account for any moneys received by the Collateral Agent in respect of any foreclosure on or disposition of Collateral pursuant to the Power of Attorney provided that neither the Collateral Agent nor any present or future Holder of Secured Obligations shall have any duty as to any Collateral, and the Collateral Agent and the present and future Holders of Secured Obligations shall be accountable only for amounts they actually receive as a result of the exercise of such powers. NONE OF THE COLLATERAL AGENT, THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO GRANTOR FOR ANY ACT OR

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FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES TO THE EXTENT ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

7. REMEDIES; RIGHTS UPON DEFAULT

(a) Subject to Article 10 of the Indenture: (i) in addition to all other rights and remedies granted to it under this Security Agreement, the Indenture, the other Note Documents and under any other instrument or agreement securing, evidencing or relating to any of the Secured Obligations, if any Event of Default shall have occurred and be continuing, the Collateral Agent may exercise all rights and remedies of a secured party under the Code; (ii) without limiting the generality of the foregoing, the Grantor expressly agrees that in any such event the Collateral Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code and other applicable law), may forthwith enter upon the premises of the Grantor where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving the Grantor or any other Person notice and opportunity for a hearing on the Collateral Agent's claim or action and may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, at any exchange at such prices as it may deem acceptable, for cash or on credit or for future delivery without assumption of any credit risk; (iii) the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the present and future Holders of Secured Obligations, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption the Grantor hereby releases; (iv) such sales may be adjourned and continued from time to time with or without notice; (v) the Collateral Agent shall have the right to conduct such sales on the Grantor's premises or elsewhere and shall have the right to use the Grantor's premises without charge for such time or times as the Collateral Agent deems necessary or advisable; (vi) if any Event of Default shall have occurred and be continuing, the Grantor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at a place or places designated by the Collateral Agent which are reasonably convenient to the Collateral Agent and the Grantor, whether at the Grantor's premises or elsewhere; (vii) until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent; (viii) the Collateral Agent shall have no obligation to the Grantor to maintain or preserve the rights of the Grantor as against third parties with respect to Collateral while Collateral is in the possession of the Collateral Agent; (ix) the Collateral Agent may, if

it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the present and future Holders of Secured Obligations), with respect to such appointment

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without prior notice or hearing as to such appointment; (x) the Collateral Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale to the Secured Obligations as provided in the Indenture, and only after so applying such net proceeds, and after the payment by the Collateral Agent for application to amounts secured by the Priority Lien and after payment by the Collateral Agent of any other amount required by any provision of law, need the Collateral Agent account for the surplus, if any, to the Grantor; (xi) to the maximum extent permitted by applicable law, the Grantor waives all claims, damages, and demands against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations arising out of the repossession, retention or sale of the Collateral except to the extent arising out of the gross negligence or willful misconduct of the Trustee, the Collateral Agent or such present or future Holder of Secured Obligations as finally determined by a court of competent jurisdiction; (xii) the Grantor agrees that ten (10) days prior notice by the Collateral Agent of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters; and (xiii) the Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all of the Secured Obligations, including any attorneys' fees or other expenses incurred by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations to collect such deficiency.

- (b) Except as otherwise specifically provided herein, the Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Indenture or any Collateral.
- (c) To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, the Grantor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (i) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as the Grantor, for expressions of interest in acquiring all or any portion of such Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets; (ix) to dispose of assets in wholesale rather than retail markets; (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment; (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral; or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the

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Collateral Agent in the collection or disposition of any of the Collateral. The Grantor acknowledges that the purpose of this



Section 7(c) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7(c). Without limitation upon the foregoing, nothing contained in this Section 7(c) shall be construed to grant any rights to the Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7(c).

- (d) Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall be required to make any demand upon, or pursue or exhaust any of their rights or remedies against, the Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof. Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, and all of its and their rights hereunder or under the Indenture or any other Note Document shall be cumulative. To the extent it may lawfully do so, the Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, any valuation, stay, appraisal, extension, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise.

#### 8. GRANT OF LICENSE TO USE INTELLECTUAL PROPERTY

For the purpose of enabling the Collateral Agent to exercise rights and remedies under Section 7 hereof (including, without limiting the terms of Section 7 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby grants to the Collateral Agent, for the benefit of the Collateral Agent for the present and future Holders of Secured Obligations, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by the Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

#### 9. LIMITATION ON THE COLLATERAL AGENT'S DUTY IN RESPECT OF COLLATERAL

The Collateral Agent shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any present or future Holder of Secured Obligations shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such present or future

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Holder of Secured Obligations, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

#### 10. REINSTATEMENT

This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of the Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part

thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

#### 11. NOTICES

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give and serve upon any other party any communication with respect to this Security Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be given in the manner, and deemed received, as provided for under the Indenture.

#### 12. SEVERABILITY

Whenever possible, each provision of this Security Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. This Security Agreement is to be read, construed and applied together with the Indenture and the other Note Documents which, taken together, set forth the complete understanding and agreement of the Trustee, the Collateral Agent, the present and future Holders of Secured Obligations and the Grantor with respect to the matters referred to herein and therein.

#### 13. NO WAIVER; CUMULATIVE REMEDIES

Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Collateral Agent and then only to the extent therein set forth. A waiver by the Collateral Agent of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Collateral Agent would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, any right, power or

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privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. None of the terms or provisions of this Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the Collateral Agent and the Grantor.

#### 14. LIMITATION BY LAW

All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

#### 15. ASSIGNMENT

The Collateral Agent may assign all of its rights and delegate all of its obligations hereunder to any successor Collateral Agent as provided in the Indenture. The Collateral Agent and each Holder of Secured Obligations may assign, indorse or transfer any instrument evidencing all or any part of the Secured Obligations as provided in, and in accordance with, the Indenture, and the holder of such instrument shall be entitled to the benefits of this Security Agreement.

#### 16. TERMINATION OF THIS SECURITY AGREEMENT

The security interests granted hereby shall continue in full force and effect until released in accordance with the provisions of the Indenture.

17. SUCCESSORS AND ASSIGNS

This Security Agreement and all obligations of the Grantor hereunder shall be binding upon the successors and assigns of the Grantor (including any debtor-in-possession on behalf of the Grantor) and shall, together with the rights and remedies of the Trustee, the Collateral Agent, and the present and future Holders of Secured Obligations, hereunder, inure to the benefit of the Trustee, the Collateral Agent, and the present and future Holders of Secured Obligations, their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Secured Obligations or any portion thereof or interest therein shall in any manner affect the Lien granted to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, hereunder. The Grantor may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Security Agreement.

18. COUNTERPARTS

This Security Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one and the same agreement.

19. GOVERNING LAW

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EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE INDENTURE OR ANY OTHER NOTE DOCUMENT, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW). GRANTOR HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK, SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN GRANTOR, THE TRUSTEE, THE COLLATERAL AGENT OR ANY OF THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS PERTAINING TO THIS SECURITY AGREEMENT, THE INDENTURE OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT THE INDENTURE OR ANY OF THE OTHER NOTE DOCUMENTS, PROVIDED, THAT THE TRUSTEE, THE COLLATERAL AGENT, ANY OF THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS AND GRANTOR ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK, AND, PROVIDED, FURTHER, NOTHING IN THIS SECURITY AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE COLLATERAL AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE SECURED OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF COLLATERAL AGENT. GRANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND GRANTOR HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. GRANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO GRANTOR AT THE ADDRESS SET FORTH IN THE INDENTURE AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILES, PROPER POSTAGE PREPAID.

20. WAIVER OF JURY TRIAL

BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT DISPUTES ARISING HEREUNDER OR RELATING HERETO BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG THE

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TRUSTEE, THE COLLATERAL AGENT, THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS AND GRANTOR ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED IN CONNECTION WITH, THIS SECURITY AGREEMENT OR ANY OF THE OTHER NOTE DOCUMENTS OR THE TRANSACTIONS

21. INDEMNIFICATION

The Grantor will pay, reimburse the Trustee, the Collateral Agent and the Holders of Notes for, and to the fullest extent lawful defend and indemnify each of them against, all claims, liabilities, taxes, costs and expenses of every type and nature (including, without limitation, the reasonable fees and charges of attorneys, advisors, auditors and consultants acting for any of them) incurred by any of them as a result of or in connection with the creation, perfection, protection or enforcement of the security interests granted hereby or the exercise or enforcement of any right or remedy under this Security Agreement or to prove, preserve, protect or enforce any such security interest or any claim based upon such security interests in any lawsuit, bankruptcy case or other insolvency or liquidation proceeding.

In accepting, holding and enforcing the security interests, rights and remedies granted hereby or arising hereunder or otherwise acting as Collateral Agent, the Collateral Agent may rely upon and enforce each and all of the provisions of Article 7 of the Indenture conferring any rights, powers, immunities, indemnities or benefits upon the Trustee, including (without limitation) the indemnification provided by Section 7.07(a) of the Indenture, and the Grantor agrees to be bound by each and all of such provisions as fully as if set forth at length herein.

22. SECTION TITLES

The Section titles contained in this Security Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

23. NO STRICT CONSTRUCTION

The parties hereto have participated jointly in the negotiation and drafting of this Security Agreement. In the event an ambiguity or question of intent or interpretation arises, this Security Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Security Agreement.

24. ADVICE OF COUNSEL

Each of the parties represents to each other party hereto that it has discussed this Security Agreement and, specifically, the provisions of Section 19 and Section 20, with its counsel.

25. BENEFIT OF HOLDERS

All Liens granted or contemplated hereby shall be for the benefit of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Indenture.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

H&E EQUIPMENT SERVICES L.L.C.,  
as the Grantor

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: Senior Vice President and Secretary

THE BANK OF NEW YORK,  
as the Trustee and the Collateral Agent

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory

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## POWER OF ATTORNEY

This Power of Attorney is executed and delivered by H&E Equipment Services L.L.C., a Louisiana limited liability company (the "GRANTOR"), to The Bank of New York (hereinafter referred to as "ATTORNEY"), as the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, under an Indenture dated as of June 17, 2002 and a Security Agreement dated as of June 17, 2002, and other related documents (each as further amended, modified or supplemented, as applicable, from time to time, the "NOTE DOCUMENTS"). No person to whom this Power of Attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from the Grantor as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and the Grantor irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this Power of Attorney. The power of attorney granted hereby is coupled with an interest, and may not be revoked or canceled by the Grantor without Attorney's written consent.

The Grantor hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), with full power of substitution, as the Grantor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in the name of the Grantor or in its own name, from time to time in Attorney's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purposes of the Note Documents, and, without limiting the generality of the foregoing, the Grantor hereby grants to Attorney the power and right, on behalf of the Grantor, without notice to or assent by the Grantor, and at any time, to do the following: (a) change the mailing address of the Grantor, open a post office box on behalf of the Grantor, open mail for the Grantor, and ask, demand, collect, give acquittances and receipts for, take possession of, endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in connection with any property of the Grantor; (b) effect any repairs to any asset of the Grantor, or continue to obtain any insurance and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any taxes, liens, security interests, or other encumbrances levied or placed on or threatened against the Grantor or its property; (d) defend any suit, action or proceeding brought against the Grantor if the Grantor does not defend such suit, action or proceeding or if Attorney believes that the Grantor is not pursuing such defense in a manner that will maximize the recovery to Attorney, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Attorney may deem appropriate; (e) file or prosecute any claim, litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Attorney for the purpose of collecting any and all such moneys due to the Grantor whenever payable and to enforce any other right in respect of the Grantor's property; (f) cause the certified public accountants then engaged by the Grantor to prepare and deliver to Attorney at any time and from time to time, promptly upon Attorney's request, the following reports: (1) a reconciliation of all accounts, (2) an aging of all accounts, (3) trial balances, (4) test verifications of such accounts as Attorney may request, and (5) the results of each physical verification of inventory; (g) communicate in its own name with any party to any Contract with regard to the assignment of the right, title and interest of the Grantor in and under the Contracts and other matters relating thereto; (h) to file such financing statements with respect to the Security Agreement, with or without the Grantor's signature, or to file a photocopy of the Security Agreement in substitution for a financing statement, as the Agent may deem appropriate and to execute in

the Grantor's name such financing statements and amendments thereto and continuation statements which may require the Grantor's signature; and (i) execute, in connection with any sale provided for in any Note Document, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral and to otherwise direct such sale or resale, all as though Attorney were the absolute owner of the property of the Grantor for all purposes, and to do, at Attorney's option and the Grantor's expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary to perfect, preserve, or realize upon the Grantor's property or assets

and Attorney's Liens thereon, all as fully and effectively as the Grantor might do. The Grantor hereby ratifies, to the extent permitted by law, all that said Attorney shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, this Power of Attorney is executed by the Grantor and the Grantor has caused its seal to be affixed pursuant to the authority of its board of directors on June \_\_, 2002.

ATTEST:

By: /s/ T. Eastman  
Name: T. Eastman  
Title: Chief Financial Officer

NOTARY PUBLIC CERTIFICATE

On this 16th day of June, 2002, Terence Eastman who is personally known to me appeared before me in his/her capacity as the Chief Financial Officer of H&E Equipment Services L.L.C. (the "Grantor") and executed on behalf of the Grantor the Power of Attorney in favor of The Bank of New York to which this Certificate is attached.

/s/ Jeffrey Gimpel  
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Notary Public

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EXHIBIT A-2

POWER OF ATTORNEY

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF NEW YORK )

KNOW ALL MEN BY THESE PRESENTS, H&E Equipment Services L.L.C., a Louisiana limited liability company with its principal place of business at 11100 Mead, 2nd Floor, Baton Rouge, LA 70816 (hereinafter called the "GRANTOR"), hereby appoints and constitutes The Bank of New York (the "SECURED PARTY") as the Trustee and the Collateral Agent under an Indenture dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among, INTER ALIA, the Grantor and Secured Party, its true and lawful attorney, with full power of substitution, and with full power and authority, upon the occurrence and during the continuance of an Event of Default (defined in the Indenture) to perform the following acts on behalf of the Grantor:

- (i) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of the Grantor in and to any letters patent, design and plant patents, utility models, industrial designs, inventory certificates and statutory invention registrations of the United States or any other country or political subdivision thereof, and all registrations, recordings, reissues, continuations, continuations-in-part, term restorations and extensions thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose;
- (ii) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of Debtor in and to any trademarks, trade names, trade styles and service marks, and all registrations, recordings, reissues, extensions and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose;
- (iii) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of Debtor in and to any copyrights, and all registrations, recordings, extensions and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose; and

(iv) To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Secured Party may in its sole but reasonable discretion determine.

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This power of attorney is made pursuant to a Copyright Security Agreement, a Patent Security Agreement and a Trademark Security Agreement, each of which is dated the date hereof, as amended from time to time, by the Grantor in favor of Secured Party and will take effect solely for the purposes of Section 7 of the Security Agreement and is subject to the conditions thereof and may not be revoked until the payment or performance in full of all "Note Obligations" as defined in the Indenture.

Dated as of June 17, 2002.

H&E EQUIPMENT SERVICES L.L.C.

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: Senior Vice President

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H&E EQUIPMENT SERVICES L.L.C. PLEDGE AGREEMENT  
(IN FAVOR OF THE COLLATERAL AGENT)

THIS PLEDGE AGREEMENT, dated as of June 17, 2002 (this "AGREEMENT") between H&E Equipment Services L.L.C., a Louisiana limited liability company (the "PLEDGOR") and The Bank of New York in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among the Pledgor, H&E Finance Corp., a Delaware corporation (together with the Pledgor, each individually an "ISSUER" and collectively the "ISSUERS"), the guarantors named therein and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain H&E Equipment Services L.L.C. Pledge Agreement dated as of the date hereof by the Pledgor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT") (such document, as amended, modified or supplemented from time to time, the "PRIORITY PLEDGE AGREEMENT"), the Pledgor has pledged to the Credit Agreement Agent, and granted the Credit Agreement Agent a security interest in, the Pledged Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "CREDIT AGREEMENT") among the Pledgor, Great Northern Equipment, Inc., a Montana corporation (together with the Pledgor, each individually, a "BORROWER", and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Pledgor, pursuant to the terms of the Indenture, has agreed to pledge to the Collateral Agent, and grant the Collateral Agent a security interest in, the Pledged Collateral (as defined below) in accordance with this Agreement; and
- (D) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Agreement as security for the Secured Obligations (as defined below) upon any and all of the Pledged Collateral (as defined below) are subordinate in ranking to all present and future Priority Liens upon any and all of the Pledged Collateral; and (ii) the Note Liens upon any and all Pledged Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Pledgor hereby agrees with the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations (as defined below) as follows:

1. DEFINITIONS

Unless otherwise defined herein, terms defined in the Indenture are used herein as therein defined, and the following shall have (unless otherwise provided elsewhere in this Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"BANKRUPTCY CODE" means title 11, United States Code, as amended from time to time, and any successor statute thereto;

"GOVERNMENTAL AUTHORITY" means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative



functions of or pertaining to government;

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"PLEGGED COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"PLEGGED ENTITY" means the issuer of Pledged Shares or Pledged Indebtedness;

"PLEGGED INDEBTEDNESS" means the Indebtedness evidenced by promissory notes and instruments listed on Part B of Schedule I hereto;

"PLEGGED SHARES" means those shares of Stock listed on Part A of Schedule I hereto;

"SPECIFIED PRIORITY LIEN" means the Lien on the Pledged Collateral granted by the Pledgor to the Credit Agreement Agent for the benefit of the Lenders under the Priority Pledge Agreement which Lien has priority to the Lien hereof to the extent and on the terms set forth in Article 10 of the Indenture; and

"SECURED OBLIGATIONS" means all liability of the Pledgor, whenever incurred or arising, under, for or in respect of the Notes, the Subsidiary Guarantees and any and all other present and future Note Obligations.

"STOCK" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission (the "COMMISSION") under the Securities Exchange Act of 1934).

## 2. PLEDGE

The Pledgor hereby pledges to the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations, and grants to the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations, a security interest in all of the following (collectively, the "PLEGGED COLLATERAL"):

- (a) (i) the Pledged Shares and the certificates representing the Pledged Shares, (ii) all options, warrants, shares and/or other securities, shares of stock, certificates, instruments or other documents representing the Pledged Shares and (iii) all dividends, distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Shares;
- (b) any additional shares of stock of the Pledged Entity from time to time acquired by the Pledgor in any manner (which shares shall be deemed to be part of the Pledged Shares), and the certificates representing such additional shares, and all dividends, distributions, bonus issues, offers by way of rights allotments, cash, instruments, compensation, assets and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Stock;
- (c) the Pledged Indebtedness and the promissory notes or instruments evidencing the Pledged Indebtedness, and all interest, cash, instruments and other property and assets from time to time received, receivable or otherwise distributed in respect of the Pledged Indebtedness;
- (d) all additional Indebtedness arising after the date hereof and owing to the Pledgor and evidenced by promissory notes or other instruments, together with such promissory notes and instruments, and all interest, cash, instruments and other property and assets from time to time received, receivable or otherwise distributed in respect of that Pledged Indebtedness; and
- (e) all proceeds of every kind, including proceeds of proceeds, of any and all of the foregoing (including, without limitation, proceeds which constitute property of the type described above) and to the extent not

otherwise included, all money and cash.

### 3. SECURITY FOR OBLIGATIONS

This Agreement secures, and the Pledged Collateral is security for, the prompt payment in full when due, whether at stated maturity, by acceleration or otherwise, and performance of all of the Secured Obligations.

### 4. DELIVERY OF PLEDGED COLLATERAL

Upon, and concurrently with, the Discharge of Priority Lien Indebtedness, without notice or demand: (i) the Pledgor shall deliver, or shall cause Credit Agreement Agent to deliver, all certificates and all promissory notes and instruments evidencing the Pledged Collateral owned by the Pledgor and all other warrants, shares and/or other securities, original shares of stock, certificates, instruments or other documents, in each case evidencing or representing title to other Pledged Collateral to the Collateral Agent; and (ii) all such Pledged Shares shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Collateral Agent and all promissory notes or other instruments evidencing any such Pledged Indebtedness shall be endorsed by the Pledgor, and, if necessary, the Credit Agreement Agent (which may endorse without recourse or warranty); PROVIDED, that if the Pledged Entity's constitutive documents contain a restriction on the right to transfer its shares then, in order to better perfect the Collateral Agent's security in any such Pledged Shares of such Pledged Entity, the certificates evidencing those Pledged Shares shall be registered in the Collateral Agent's name or, at the Collateral Agent's option, the Collateral Agent's nominee's name, and shall be accompanied by a copy of the share register of such Pledged Entity showing the Collateral Agent's name or, at the Collateral Agent's option, the Collateral Agent's nominee's name, as the registered owner of those Pledged Shares of such Pledged Entity, certified by the corporate secretary of such Pledged Entity as being true and complete.

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### 5. REPRESENTATIONS AND WARRANTIES

The Pledgor represents and warrants to the Collateral Agent that:

- (a) The Pledgor is, and at the time of delivery of the Pledged Shares to Credit Agreement Agent will be, the sole holder of record (unless at the time of delivery of such Pledged Shares to Credit Agreement Agent, such Pledged Shares are registered in Credit Agreement Agent's or, at Credit Agreement Agent's option, Credit Agreement Agent's nominee's name, in which case the Pledgor was the sole holder of record of such Pledged Shares immediately prior to registration in Credit Agreement Agent's or Credit Agreement Agent's nominee's name, as applicable) and the sole beneficial owner of such Pledged Collateral pledged by the Pledgor free and clear of any Lien thereon or affecting the title thereto, except for any Lien created by this Agreement and any Permitted Lien (including any Specified Priority Lien); the Pledgor is and at the time of delivery of the instruments or certificates evidencing the Pledged Indebtedness to Credit Agreement Agent will be, the sole beneficial owner of such Pledged Collateral free and clear of any Lien thereon or affecting title thereto, except for any Lien created by this Agreement and any Permitted Lien;
- (b) all of the Pledged Shares have been duly authorized, validly issued and are fully paid and non-assessable; the Pledged Indebtedness has been duly authorized, authenticated or issued and delivered by, and is the legal, valid and binding obligations of, the Pledged Entity, and the Pledged Entity is not in default thereunder;
- (c) the Pledgor has the right and requisite authority to pledge, assign, transfer, deliver, deposit and set over the Pledged Collateral pledged by the Pledgor to the Credit Agreement Agent and the Collateral Agent as provided herein;
- (d) none of the Pledged Shares or Pledged Indebtedness has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject;
- (e) all of the Pledged Shares are presently owned by the Pledgor, and are presently represented by the certificates listed on Part A of Schedule I hereto and the Pledged Collateral constitutes, and so long as this Agreement remains in effect will continue to constitute, 100%

of the equity interests (whether options, warrants or stock or otherwise) held by the Pledgor in the Pledged Entity. As of the date hereof, there are no existing options, warrants, calls or commitments of any character whatsoever relating to the Pledged Shares;

- (f) no consent, approval, authorization or other order or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required (i) for the pledge by the Pledgor of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by the Pledgor, or (ii) for the exercise by Credit Agreement Agent or by the Collateral Agent of the voting or other rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally and except as may be generally applicable to Credit Agreement Agent or the Collateral Agent;

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- (g) the pledge, assignment and delivery of the Pledged Collateral pursuant to this Agreement will create a valid second priority Lien on and a second priority perfected security interest in favor of the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations in the Pledged Collateral and the proceeds thereof, securing the payment of the Secured Obligations, subject to no other Lien (other than the Specified Priority Lien);
- (h) as at the date hereof, the Pledged Shares constitute 100% of the issued and outstanding shares of common Stock of the Pledged Entity; and
- (i) except as disclosed on Part B of Schedule I, none of the Pledged Indebtedness is subordinated in right of payment to other Indebtedness (except for the Priority Lien and the Secured Obligations) or subject to the terms of an indenture.

The representations and warranties set forth in this Section 5 shall survive the execution and delivery of this Agreement.

## 6. COVENANTS

The Pledgor covenants and agrees that until the payment and performance in full of the Secured Obligations:

- (a) The Pledgor will not sell, assign, transfer, pledge, or otherwise encumber any of its rights in or to the Pledged Collateral, or any unpaid dividends, interest or other distributions or payments with respect to the Pledged Collateral or grant a Lien in the Pledged Collateral, unless otherwise expressly permitted by the Indenture;
- (b) The Pledgor will, at its expense, promptly execute, acknowledge and deliver all such instruments and take all such actions as the Collateral Agent from time to time may reasonably request in order to ensure to the Trustee, the Collateral Agent and all the present and future Holders of Secured Obligations the benefits of the Liens in and to the Pledged Collateral intended to be created by this Agreement, including the filing of any necessary Uniform Commercial Code financing statements, which may be filed by the Collateral Agent with or (to the extent permitted by law) without the signature of the Pledgor, and will cooperate with the Collateral Agent, at the Pledgor's expense, in obtaining all necessary approvals and making all necessary filings under federal, state, local or foreign law in connection with such Liens or any sale or transfer of the Pledged Collateral;
- (c) The Pledgor has and will defend the title to the Pledged Collateral and the Liens of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations in the Pledged Collateral against the claim of any Person other than the holders of Specified Priority Liens and will maintain and preserve Liens of the Collateral Agent; and
- (d) Upon, and concurrently with, the Discharge of Priority Lien Indebtedness, without notice or demand the Pledgor will, upon obtaining ownership of any additional Stock or promissory notes or instruments of the Pledged Entity or Stock or promissory notes or instruments otherwise required to be pledged pursuant to any of the Note Documents or the Priority Pledge Agreement, which Stock, notes or instruments are not already Pledged Collateral, promptly (and in any

event within three (3) Business Days) deliver to the Collateral Agent a Pledge Amendment, duly executed by the Pledgor, in substantially the

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form of Schedule II hereto (a "PLEDGE AMENDMENT") in respect of any such additional Stock, notes or instruments, pursuant to which the Pledgor shall pledge to the Collateral Agent all of such additional Stock, notes and instruments; PROVIDED, HOWEVER, that (i) in no event shall the Pledgor be required to pledge to the Collateral Agent shares of Stock of an entity organized under the laws of a jurisdiction outside the United States which represent more than 65% of the voting power of all classes of issued and outstanding shares of such entity which are entitled to vote; and (ii) prior to the Discharge of Priority Lien Indebtedness, such additional Stock, notes or instruments need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent. The Pledgor hereby authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement and agrees that all Pledged Shares and Pledged Indebtedness listed on any Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder be considered Pledged Collateral.

#### 7. THE PLEDGOR'S RIGHTS

As long as no Event of Default shall have occurred and be continuing and until written notice shall be given to the Pledgor in accordance with Section 8(a) hereof:

- (a) The Pledgor shall have the right, from time to time, to vote and give consents with respect to the Pledged Collateral, or any part thereof for all purposes not inconsistent with the provisions of this Agreement and the other Note Documents; PROVIDED, HOWEVER, that no vote shall be cast, and no consent shall be given or action taken, which would have the effect of impairing the position or interest of the Collateral Agent in respect of the Pledged Collateral or which would authorize, effect or consent to (unless and to the extent expressly permitted by the Indenture), or to the extent that the consummation of the transaction is conditional upon the payment in full in cash of the Note Obligations:
  - (i) the dissolution or liquidation, in whole or in part, of the Pledged Entity;
  - (ii) the consolidation or merger of the Pledged Entity with any other Person;
  - (iii) the sale, disposition or encumbrance of all or substantially all of the assets of the Pledged Entity, except for Liens in favor of the Credit Agreement Agent pursuant to the Priority Pledge Agreement or the Collateral Agent pursuant to the terms hereof;
  - (iv) any change in the authorized number of shares, the stated capital or the authorized share capital of the Pledged Entity or the issuance of any additional shares of its Stock; or
  - (v) the alteration of the voting rights with respect to the Stock of the Pledged Entity; and
- (b) (i) The Pledgor shall be entitled, from time to time, to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Shares and Pledged Indebtedness to the extent not in violation of the Indenture other than any and all: (A) dividends and interest paid or payable other than in cash in respect of any Pledged Collateral, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Pledged Collateral; (B) dividends and other distributions paid or payable in cash in respect of any Pledged Shares in connection with a partial or total liquidation or

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dissolution or in connection with a reduction of capital, capital surplus or paid-in capital of the Pledged Entity; and (C) cash paid, payable or otherwise distributed, in respect of principal of, or in redemption of, or in exchange for, any Pledged Collateral; PROVIDED, HOWEVER, that until actually paid

all rights to such distributions shall remain subject to the Lien created by this Agreement; and

- (ii) all dividends and interest (other than such cash dividends and interest as are permitted to be paid to the Pledgor in accordance with clause (i) above) and all other distributions in respect of any of the Pledged Shares or Pledged Indebtedness, whenever paid or made, shall be delivered to Collateral Agent to hold as Pledged Collateral and shall, if received by the Pledgor, be received in trust for the benefit of Collateral Agent, be segregated from the other property or funds of the Pledgor, and be forthwith delivered to Collateral Agent as Pledged Collateral in the same form as so received (with any necessary indorsement); PROVIDED that until the Discharge of Priority Lien Indebtedness, such dividends, interest and distributions need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent and may also be held in trust for the Credit Agreement Agent and need not be delivered to the Collateral Agent so long as they are held in trust for the Collateral Agreement Agent.

#### 8. DEFAULTS AND REMEDIES; PROXY

- (a) Subject to Article 10 of the Indenture: (i) upon the occurrence of an Event of Default and during the continuation of such Event of Default, and concurrently with written notice to the Pledgor, the Collateral Agent (personally or through an agent) is hereby authorized and empowered to transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, to exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon, to sell in one or more sales after ten (10) days' notice of the time and place of any public sale or of the time at which a private sale is to take place (which notice the Pledgor agrees is commercially reasonable) the whole or any part of the Pledged Collateral and to otherwise act with respect to the Pledged Collateral as though the Collateral Agent was the outright owner thereof; (ii) any sale shall be made at a public or private sale at the Collateral Agent's place of business, or at any place to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as the Collateral Agent may deem fair, and the Collateral Agent may be the purchaser of the whole or any part of the Pledged Collateral so sold and hold the same thereafter in its own right free from any claim of the Pledgor or any right of redemption; (iii) each sale shall be made to the highest bidder, but the Collateral Agent reserves the right to reject any and all bids at such sale which, in its discretion, it shall deem inadequate; (iv) demands of performance, except as otherwise herein specifically provided for, notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of the Collateral Agent; (v) THE PLEDGOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE COLLATERAL AGENT AS THE PROXY AND ATTORNEY-IN-FACT OF THE PLEDGOR WITH RESPECT TO THE PLEDGED COLLATERAL FOR THE PURPOSE OF CARRYING OUT THE TERMS OF THIS AGREEMENT, INCLUDING THE RIGHT TO VOTE THE PLEDGED SHARES, WITH FULL POWER OF SUBSTITUTION TO DO SO; (vi) THE APPOINTMENT OF THE

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COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE TERMINATION DATE; (vii) IN ADDITION TO THE RIGHT TO VOTE THE PLEDGED SHARES, THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF THE PLEDGED SHARES WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS); (viii) SUCH PROXY AND POWER OF ATTORNEY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY PLEDGED SHARES ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE PLEDGED SHARES OR ANY OFFICER OR AGENT THEREOF), UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT (AS DEFINED IN THE INDENTURE); AND (ix) NOTWITHSTANDING THE FOREGOING, THE COLLATERAL AGENT SHALL NOT HAVE ANY DUTY TO EXERCISE ANY SUCH RIGHT OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO.

- (b) Subject to Article 10 of the Indenture: if, at the original time or times appointed for the sale of the whole or any part of the Pledged Collateral, the highest bid, if there be but one sale, shall be inadequate to discharge in full all the Priority Lien Obligations and the Secured Obligations, or if the Pledged Collateral be offered for sale in lots, if at any of such sales, the highest bid for the lot offered for sale would indicate to the Collateral Agent, in its discretion, that the proceeds of the sales of the whole of the Pledged Collateral would be unlikely to be sufficient to discharge all the Priority Lien Obligations and the Secured Obligations, the Collateral Agent may, on one or more occasions and in its discretion, postpone any of said sales by public announcement at the time of sale or the time of previous postponement of sale, and no other notice of such postponement or postponements of sale need be given, any other notice being hereby waived; PROVIDED, HOWEVER, that any sale or sales made after such postponement shall be after ten (10) days' notice to the Pledgor.
- (c) Subject to Article 10 of the Indenture: if, at any time when the Collateral Agent in its sole discretion reasonably determines, following the occurrence and during the continuance of an Event of Default, that, in connection with any actual or contemplated exercise of its rights (when permitted under this Section 8) to sell the whole or any part of the Pledged Shares hereunder, it is necessary or advisable to effect a public registration of all or part of the Pledged Collateral pursuant to the Securities Act of 1933, as amended (or any similar statute then in effect) (the "ACT"), the Pledgor shall, in an expeditious manner, cause the Pledged Entity to:
- (i) prepare and file with the Commission a registration statement with respect to the Pledged Shares and in good faith use commercially reasonable efforts to cause such registration statement to become and remain effective;
  - (ii) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the

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provisions of the Act with respect to the sale or other disposition of the Pledged Shares covered by such registration statement whenever the Collateral Agent shall desire to sell or otherwise dispose of the Pledged Shares;

- (iii) furnish to the Collateral Agent such numbers of copies of a prospectus and a preliminary prospectus, in conformity with the requirements of the Act, and such other documents as the Collateral Agent may request in order to facilitate the public sale or other disposition of the Pledged Shares by the Collateral Agent;
- (iv) use commercially reasonable efforts to register or qualify the Pledged Shares covered by such registration statement under such other securities or blue sky laws of such jurisdictions within the United States and Puerto Rico as the Collateral Agent shall request, and do such other reasonable acts and things as may be required of it to enable the Collateral Agent to consummate the public sale or other disposition in such jurisdictions of the Pledged Shares by the Collateral Agent;
- (v) use its best efforts to furnish, at the request of the Collateral Agent, on the date that shares of the Pledged Collateral are delivered to the underwriters for sale pursuant to such registration or, if the security is not being sold through underwriters, on the date that the registration statement with respect to such Pledged Shares becomes effective, (A) an opinion, dated such date, of the independent counsel representing such registrant for the purposes of such registration, addressed to the underwriters, if any, and in the event the Pledged Shares are not being sold through underwriters, then to the Collateral Agent, in customary form and covering matters of the type customarily covered in such legal opinions; and (B) a comfort letter, dated such date, from the independent certified public accountants of such registrant, addressed to the underwriters, if any, and in the event the Pledged Shares are not being sold through underwriters, then to the Collateral Agent, in a customary form

and covering matters of the type customarily covered by such comfort letters and as the underwriters or the Collateral Agent shall reasonably request. The opinion of counsel referred to above shall additionally cover such other legal matters with respect to the registration in respect of which such opinion is being given as the Collateral Agent may reasonably request. The letter referred to above from the independent certified public accountants shall additionally cover such other financial matters (including information as to the period ending not more than five (5) Business Days prior to the date of such letter) with respect to the registration in respect of which such letter is being given as the Collateral Agent may reasonably request; and

- (vi) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable but not later than 18 months after the effective date of the registration statement, an earnings statement covering the period of at least 12 months beginning with the first full month after the effective date of such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Act.
- (d) All expenses incurred in complying with Section 8(c) hereof, including, without limitation, all registration and filing fees (including all reasonable expenses incident to

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filing with the National Association of Securities Dealers, Inc.), printing expenses, reasonable fees and disbursements of counsel for the registrant, the reasonable fees and expenses of counsel for the Collateral Agent, expenses of the independent certified public accountants (including any special audits incident to or required by any such registration) and expenses of complying with the securities or blue sky laws or any jurisdictions, shall be paid by the Pledgor.

- (e) If, at any time when the Collateral Agent shall determine to exercise its right to sell the whole or any part of the Pledged Collateral hereunder, such Pledged Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Act, the Collateral Agent may, in its discretion (subject only to applicable requirements of law), sell such Pledged Collateral or part thereof by private sale in such manner and under such circumstances as the Collateral Agent may deem necessary or advisable, but subject to the other requirements of this Section 8, and shall not be required to effect such registration or to cause the same to be effected. Without limiting the generality of the foregoing, in any such event, the Collateral Agent in its discretion (x) may, in accordance with applicable securities laws, proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Pledged Collateral or part thereof could be or shall have been filed under said Act (or similar statute), (y) may approach and negotiate with a single possible purchaser to effect such sale, and (z) may restrict such sale to a purchaser who is an accredited investor under the Act and who will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such Pledged Collateral or any part thereof. In addition to a private sale as provided above in this Section 8, if any of the Pledged Collateral shall not be freely distributable to the public without registration under the Act (or similar statute) at the time of any proposed sale pursuant to this Section 8, then the Collateral Agent shall not be required to effect such registration or cause the same to be effected but, in its discretion (subject only to applicable requirements of law), may require that any sale hereunder (including a sale at auction) be conducted subject to restrictions:
  - (i) as to the financial sophistication and ability of any Person permitted to bid or purchase at any such sale;
  - (ii) as to the content of legends to be placed upon any certificates representing the Pledged Collateral sold in such sale, including restrictions on future transfer thereof;
  - (iii) as to the representations required to be made by each Person bidding or purchasing at such sale relating to that Person's access to financial information about the Pledgor and such Person's intentions as to the holding of the Pledged Collateral

so sold for investment for its own account and not with a view to the distribution thereof; and

- (iv) as to such other matters as the Collateral Agent may, in its discretion, deem necessary or appropriate in order that such sale (notwithstanding any failure so to register) may be effected in compliance with the Bankruptcy Code and other laws affecting the enforcement of creditors' rights and the Act and all applicable state securities laws.

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- (f) The Pledgor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with clause (e) above. The Pledgor also acknowledges that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the Pledged Entity to register such securities for public sale under the Act, or under applicable state securities laws, even if the Pledgor and the Pledged Entity would agree to do so.
- (g) The Pledgor agrees to the maximum extent permitted by applicable law that following the occurrence and during the continuance of an Event of Default it will not at any time plead, claim or take the benefit of any appraisal, valuation, stay, extension, moratorium or redemption law now or hereafter in force in order to prevent or delay the enforcement of this Agreement, or the absolute sale of the whole or any part of the Pledged Collateral or the possession thereof by any purchaser at any sale hereunder, and the Pledgor waives the benefit of all such laws to the extent it lawfully may do so. The Pledgor agrees that it will not interfere with any right, power and remedy of each of the Collateral Agent provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies. No failure or delay on the part of the Collateral Agent to exercise any such right, power or remedy and no notice or demand which may be given to or made upon the Pledgor by the Collateral Agent with respect to any such remedies shall operate as a waiver thereof, or limit or impair the Collateral Agent's right to take any action or to exercise any power or remedy hereunder, without notice or demand, or prejudice its rights as against the Pledgor in any respect.
- (h) The Pledgor further agrees that a breach of any of the covenants contained in this Section 8 will cause irreparable injury to the Collateral Agent and the present and future Holders of Secured Obligations, that the Collateral Agent and the present and future Holders of Secured Obligations shall have no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 8 shall be specifically enforceable against the Pledgor, and the Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that the Secured Obligations are not then due and payable in accordance with the agreements and instruments governing and evidencing such obligations.

#### 9. WAIVER

No delay on the Collateral Agent's part in exercising any power of sale, Lien, option or other right hereunder, and no notice or demand which may be given to or made upon the Pledgor by the Collateral Agent with respect to any power of sale, Lien, option or other right hereunder, shall constitute a waiver thereof, or limit or impair the Collateral Agent's right to take any action or to exercise any power of sale, Lien, option, or any other right hereunder, without notice or demand, or prejudice the Collateral Agent's rights as against the Pledgor in any respect.

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#### 10. ASSIGNMENT

The Collateral Agent may assign all of its rights and delegate all of its obligations hereunder to any successor Collateral Agent as provided in the



Indenture. The Collateral Agent and each Holder of Secured Obligations may assign, indorse or transfer any instrument evidencing all or any part of the Secured Obligations as provided in, and in accordance with, the Indenture, and the holder of such instrument shall be entitled to the benefits of this Agreement.

#### 11. TERMINATION

The security interests granted hereby shall continue in full force and effect until released in accordance with the provisions of the Indenture.

#### 12. LIEN ABSOLUTE

All rights of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations hereunder, and all obligations of the Pledgor hereunder, shall be absolute and unconditional irrespective of:

- (a) any lack of validity or enforceability of the Indenture, any other Note Document or any other agreement or instrument governing or evidencing any of the Secured Obligations;
- (b) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture, any other Note Document or any other agreement or instrument governing or evidencing any of the Secured Obligations;
- (c) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Secured Obligations;
- (d) the insolvency of any Obligor; or
- (e) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Pledgor.

#### 13. RELEASE

The Pledgor consents and agrees that each of the Trustee, the Collateral Agent and all the present and future Holders of Secured Obligations may at any time, or from time to time, in its discretion do any of the following without changing the Pledgor's obligations hereunder or affecting the validity, perfection or priority of the Lien granted hereunder:

- (a) renew, extend or change the time of payment, and/or the manner, place or terms of payment of all or any part of the Secured Obligations; and
- (b) exchange, release and/or surrender all or any of the Collateral (including the Pledged Collateral), or any part thereof, by whomsoever deposited, which is now or may hereafter be held by the Collateral Agent in connection with all or any of the Secured Obligations; all in such manner and upon such terms as the Collateral Agent may deem proper, and without notice to or further assent from the Pledgor, it being hereby agreed that the Pledgor shall be and remain bound upon this Agreement, irrespective of the value or condition of any of the Collateral, and notwithstanding any such change, exchange,

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settlement, compromise, surrender, release, renewal or extension, and notwithstanding also that the Secured Obligations may, at any time, exceed the aggregate principal amount thereof set forth in the Indenture, or any other agreement governing any of the Secured Obligations. The Pledgor hereby waives notice of acceptance of this Agreement, and also presentment, demand, protest and notice of dishonor of any and all of the Secured Obligations, and promptness in commencing suit against any party hereto or liable hereon, and in giving any notice to or of making any claim or demand hereunder upon the Pledgor. No act or omission of any kind on the Collateral Agent's part shall in any event affect or impair this Agreement.

#### 14. REINSTATEMENT

This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Pledgor or the Pledged Entity for liquidation or reorganization, should the Pledgor or the Pledged Entity become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Pledgor's or the Pledged Entity's assets, and shall continue to be effective or be reinstated, as the case may be, if at any

time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

#### 15. MISCELLANEOUS

- (a) The Collateral Agent may execute any of its duties hereunder by or through agents or employees and shall be entitled to advice of counsel of its selection concerning all matters pertaining to its duties hereunder.
- (b) The Pledgor agrees to promptly reimburse the Collateral Agent for actual out-of-pocket expenses, including, without limitation, reasonable counsel fees and expenses, incurred by the Collateral Agent in connection with the administration and enforcement of this Agreement.
- (c) The Pledgor will pay, reimburse the Trustee, the Collateral Agent and the Holders of Notes for, and to the fullest extent lawful defend and indemnify each of them against, all claims, liabilities, taxes, costs and expenses of every type and nature (including, without limitation, the reasonable fees and charges of attorneys, advisors, auditors and consultants acting for any of them) incurred by any of them as a result of or in connection with the creation, perfection, protection or enforcement of the security interests granted hereby or the exercise or enforcement of any right or remedy under this Agreement or to prove, preserve, protect or enforce any such security interest or any claim based upon such security interests in any lawsuit, bankruptcy case or other insolvency or liquidation proceeding. In accepting, holding and enforcing the security interests, rights and remedies granted hereby or arising hereunder or otherwise acting as Collateral Agent, the Collateral Agent may rely upon and enforce each and all of the provisions of Article 7 of the Indenture conferring any rights, powers, immunities, indemnities or benefits upon the Trustee, including (without limitation) the indemnification provided by Section 7.07(a) of

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the Indenture, and the Pledgor agrees to be bound by each and all of such provisions as fully as if set forth at length herein.

- (d) Neither the Collateral Agent, nor any of its respective officers, directors, employees, agents or counsel shall be liable for any action lawfully taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.
- (e) THIS AGREEMENT SHALL BE BINDING UPON THE PLEDGOR AND ITS SUCCESSORS AND ASSIGNS (INCLUDING A DEBTOR-IN-POSSESSION ON BEHALF OF THE PLEDGOR), AND SHALL INURE TO THE BENEFIT OF, AND BE ENFORCEABLE BY, THE TRUSTEE, THE COLLATERAL AGENT AND THE PRESENT AND FUTURE HOLDERS OF SECURED OBLIGATIONS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW), AND NONE OF THE TERMS OR PROVISIONS OF THIS AGREEMENT MAY BE WAIVED, ALTERED, MODIFIED OR AMENDED EXCEPT IN WRITING DULY SIGNED FOR AND ON BEHALF OF THE COLLATERAL AGENT AND THE PLEDGOR.

#### 16. SEVERABILITY

If for any reason any provision or provisions hereof are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or effect those portions of this Agreement which are valid.

#### 17. NOTICES

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give or serve

upon any other a communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and either shall be delivered in person or sent by registered or certified mail, return receipt requested, with proper postage prepaid, or by facsimile transmission and confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided herein:

(a) If to the Trustee or the Collateral Agent, at:

The Bank of New York  
101 Barclay Street, Floor 8 West  
New York, New York 10286  
Telecopier Number: (212) 896-7299  
Attention: Corporate Trust Administration

(b) If to the Pledgor, at:

H&E Equipment Services L.L.C.

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H&E Equipment Services L.L.C.  
11100 Mead Road  
Second Floor  
Baton Rouge, LA 70816  
Attention: John M. Enguist  
Telephone No.: (225) 298-5200  
Telecopier No.: (225) 298-5236

With a copy to:

Kirkland & Ellis  
Citicorp Center  
153 East 53rd Street  
New York, New York 10022  
Telecopier No.: (212) 446-4900  
Attention: Joshua Korff

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly served, given or delivered (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by telecopy or other similar facsimile transmission (with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided in this Section 17), (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid, or (d) when delivered, if hand-delivered by messenger. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designated above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

#### 18. SECTION TITLES

The Section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

#### 19. COUNTERPARTS

This Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement.

#### 20. BENEFIT OF HOLDERS

All security interests granted or contemplated hereby shall be for the benefit of the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations, and all proceeds or payments realized from the Pledged Collateral in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Indenture.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

H&E EQUIPMENT SERVICES L.L.C.,  
as the Pledgor

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: SVP Finance and Secretary

THE BANK OF NEW YORK,  
as the Trustee and the Collateral Agent

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory

H&E EQUIPMENT SERVICES L.L.C.  
TRADEMARK SECURITY AGREEMENT  
(IN FAVOR OF THE COLLATERAL AGENT)

THIS TRADEMARK SECURITY AGREEMENT, dated as of June 17, 2002 (this "TRADEMARK SECURITY AGREEMENT") between H&E Equipment Services L.L.C., a Louisiana limited liability company (the "GRANTOR") and The Bank of New York in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture and Security Agreement referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among H&E Equipment Services L.L.C., a Louisiana limited liability company ("H&E LLC"), H&E Finance Corp., a Delaware corporation (together with H&E LLC, each individually an "ISSUER" and collectively the "ISSUERS"), the guarantors named therein and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain H&E Equipment Services L.L.C. Trademark Security Agreement dated as of the date hereof by the Grantor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT"), the Grantor has granted to the Credit Agreement Agent a first-priority lien and security interest in the Trademark Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 among Grantor, Great Northern Equipment, Inc., a Montana corporation (together with Grantor each individually, a "BORROWER," and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor, pursuant to the terms of the Indenture and the H&E Equipment Services L.L.C. Security Agreement (in favor of the Collateral Agent) (including all annexes, exhibits or schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "SECURITY AGREEMENT"), dated as of the date hereof, by the Grantor in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations (as defined below), has agreed to grant the Collateral Agent a continuing Lien on the Trademark Collateral and a security interest in the Trademark Collateral in accordance with this Trademark Security Agreement;
- (D) Pursuant to the Security Agreement, the Grantor is required to execute and deliver to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations this Trademark Security Agreement; and
- (E) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Trademark Security Agreement as security for the Secured Obligations upon any and all of

the Trademark Collateral are subordinate in ranking to all present and future Priority Liens upon any and all of the Trademark Collateral; and (ii) the Note Liens upon any and all Trademark Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor hereby agrees with the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations follows:

1. DEFINED TERMS

All capitalized terms used but not otherwise defined herein have the

meanings given to them in the Indenture. The following terms shall have (unless otherwise provided elsewhere in this Trademark Security Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"TRADEMARK COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"TRADEMARK LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right to use any Trademark; and

"TRADEMARKS" means all of the following now owned or hereafter existing, adopted or acquired by any Obligor: (a) all trademarks, trade names, limited liability company names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, (b) all reissues, extensions or renewals thereof, and (c) all goodwill associated with or symbolized by any of the foregoing;

"SECURED OBLIGATIONS" means all liability of the Grantor, whenever incurred or arising, under, for or in respect of the Notes, the Subsidiary Guarantees and any and all other present and future Note Obligations.

## 2. GRANT OF SECURITY INTEREST IN TRADEMARK COLLATERAL

To secure the payment of the Secured Obligations, the Grantor hereby grants to the Trustee as the Collateral Agent on behalf of the present and future Holders of Secured Obligations, a continuing security interest in all of the Grantor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the "TRADEMARK COLLATERAL"):

- (a) all of its Trademarks and Trademark Licenses to which the Grantor is a party including those referred to on Schedule I;
- (b) all reissues, continuations or extensions of the foregoing;
- (c) all goodwill of the business connected with the use of, and symbolized by, each Trademark and each Trademark License; and
- (d) all products and proceeds of the foregoing, including, without limitation, any claim by the Grantor against third parties for past, present or future (i) infringement or dilution of any Trademark or Trademark licensed under any Trademark License or (ii) injury to the goodwill associated with any Trademark or any Trademark licensed under any Trademark License.

## 3. SECURITY AGREEMENT

The security interests granted pursuant to this Trademark Security Agreement are granted in conjunction with the security interests granted to the Collateral Agent for the benefit of all present and future Holders of Secured Obligations, pursuant to the Security Agreement. The Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

## 4. TERMINATION OF THIS TRADEMARK AGREEMENT

The security interests granted hereby shall continue in full force and effect until released in accordance with the provisions of the Indenture.

## 5. COUNTERPARTS

This Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement.

IN WITNESS WHEREOF, the Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

H&E EQUIPMENT SERVICES L.L.C.,

as the Grantor

By: /s/ T. Eastman  
Name: T. Eastman  
Title: CFO and Assistant Secretary

ACCEPTED AND ACKNOWLEDGED BY:

THE BANK OF NEW YORK,  
as the Trustee and the Collateral Agent

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory

ACKNOWLEDGMENT OF GRANTOR

STATE OF NEW YORK )  
                          ) ss.  
COUNTY OF NEW YORK )

On this 16th day of June, 2002 before me personally appeared Terence Eastman, proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument on behalf of H&E Equipment Services L.L.C., who being by me duly sworn did depose and say that he/she is an authorized officer of said corporation, that the said instrument was signed on behalf of said corporation as authorized by its Board of Directors and that he/she acknowledged said instrument to be the free act and deed of said corporation.

/s/ Jeffrey Gimpel

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Notary Public

H&E FINANCE CORP. SECURITY AGREEMENT  
(IN FAVOR OF THE COLLATERAL AGENT)

THIS SECURITY AGREEMENT, dated as of June 17, 2002 (this "SECURITY AGREEMENT") is entered into by and between H&E Finance Corp., a Delaware corporation (the "GRANTOR"), and The Bank of New York, in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among the Grantor, H&E Equipment Services L.L.C., a Louisiana limited liability company ("H&E" and together with Grantor, each individually an "ISSUER" and collectively the "ISSUERS"), the guarantors named therein and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain H&E Finance Corp. Security Agreement dated as of the date hereof by the Grantor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT") (such document, as amended, modified or supplemented from time to time, the "PRIORITY SECURITY AGREEMENT"), the Grantor has granted to the Credit Agreement Agent a first-priority lien and security interest in the Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "CREDIT AGREEMENT") among H&E, Great Northern Equipment, Inc., a Montana corporation (together with H&E, each individually, a "BORROWER", and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor, pursuant to the terms of the Indenture, has agreed to grant the Collateral Agent a continuing Lien on the Collateral (as defined below) and a security interest in the Collateral in accordance with this Security Agreement; and
- (D) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Security Agreement as security for the Secured Obligations upon any and all of the Collateral are subordinate in ranking to all present and future Priority Liens upon any and all of the Collateral; and (ii) the Note Liens upon any and all Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor hereby agrees with the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations (as defined below) as follows:

1. DEFINED TERMS

(a) Unless otherwise defined herein, terms defined in the Indenture and used herein have the meanings given to them in the Indenture. All other undefined terms contained in this Security Agreement, unless the context indicates otherwise, have the meanings provided for by Article 9 of the New York Uniform Commercial Code (the "CODE") to the extent the same are used or defined therein.

(b) The following shall have (unless otherwise provided elsewhere in this Security Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"ACCOUNT DEBTOR" means any Person who may become obligated to an Obligor under, with respect to, or on account of, an



Account, Chattel Paper or General Intangibles (including a payment intangible);

"ACCOUNTS" means all "accounts," as such term is defined in the Code, now owned or hereafter acquired by any Obligor including (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper, or Instruments), (including any such obligations that may be characterized as an account or contract right under the Code), (b) all of each Obligor's rights in, to and under all purchase orders or receipts for goods or services, (c) all of each Obligor's rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to any Obligor for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Obligor or in connection with any other transaction (whether or not yet earned by performance on the part of such Obligor), (e) all health care insurance receivables and (f) all collateral security of any kind, given by any Account Debtor or any other Person with respect to any of the foregoing;

"CHATTEL PAPER" means any "chattel paper," as such term is defined in the Code, including electronic chattel paper, now owned or hereafter acquired by any Obligor;

"COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"CONTRACTS" means all "contracts," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, in any event, including all contracts, undertakings, or agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which any Obligor may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account;

"COPYRIGHT LICENSE" means any and all rights now owned or hereafter acquired by any Obligor under any written agreement granting any right to use any Copyright or Copyright registration;

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"COPYRIGHT SECURITY AGREEMENTS" means the Copyright Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"COPYRIGHTS" means all of the following now owned or hereafter acquired by any Obligor: (a) all copyrights and General Intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof;

"DEPOSIT ACCOUNTS" means all "deposit accounts" as such term is defined in the Code, now or hereafter held in the name of any Obligor;

"DOCUMENTS" means all "documents," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located;

"EQUIPMENT INVENTORY" means Inventory of any Borrower consisting of equipment held for sale or lease to third parties and equipment while on lease to third parties;

"FIXTURES" means all "fixtures" as such term is defined in the Code, now owned or hereafter acquired by any Obligor;

"GENERAL INTANGIBLES" means all "general intangibles," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, including all right, title and interest that such Obligor may now or hereafter have in or under any Contract, all payment intangibles, customer lists, Licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark License), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including without limitation all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Obligor or any computer bureau or service company from time to time acting for such Obligor;

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"GOODS" means all "goods" as defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, including embedded software to the extent included in "goods" as defined in the Code, manufactured homes, standing timber that is cut and removed for sale and unborn young of animals;

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"INSTRUMENTS" means any "instrument," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper;

"INTELLECTUAL PROPERTY" means any and all Licenses, Patents, Copyrights, Trademarks, and the goodwill associated with such Trademarks;

"INVENTORY" means all "inventory," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Obligor for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind, nature or description used or consumed or to be used or consumed in such Obligor's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software;

"INVESTMENT PROPERTY" means all "investment property" as such term is defined in the Code now owned or hereafter acquired by any Obligor, wherever located, including (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (ii) all securities entitlements of any Obligor, including the rights of any Obligor to any securities account

and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account; (iii) all securities accounts of any Obligor; (iv) all commodity contracts of any Obligor; and (v) all commodity accounts of any Obligor;

"LETTER-OF-CREDIT RIGHTS" means "letter-of-credit rights" as such term is defined in the Code, now owned or hereafter acquired by any Obligor, including rights to payment or performance under a letter of credit, whether or not such Obligor, as beneficiary, has demanded or is entitled to demand payment or performance;

"LICENSE" means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by any Obligor;

"PATENT LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right with respect to any invention on which a Patent is in existence;

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"PATENT SECURITY AGREEMENTS" means the Patent Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"PATENTS" means all of the following in which any Obligor now holds or hereafter acquires any interest: (a) all letters patent of the United States or of any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or any other country, and (b) all reissues, continuations, continuations-in-part or extensions thereof;

"P&E" means all "equipment," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located and, in any event, including all such Obligor's machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto. P&E excludes Equipment Inventory and Fixtures;

"PROCEEDS" means "proceeds," as such term is defined in the Code, including (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Obligor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to any Obligor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting under color of governmental authority), (c) any claim of any Obligor against third parties (i) for past, present or future infringement of any Patent or Patent License, or (ii) for past, present or future infringement or dilution of any Copyright, Copyright License, Trademark or Trademark License, or for injury to the goodwill associated with any Trademark or Trademark License, (d) any recoveries by any Obligor against third parties with respect to any litigation or dispute concerning any of the Collateral, including claims arising out of the loss or nonconformity of, interference with the use of, defects in, or infringement of

rights in, or damage to, Collateral, (e) all amounts collected on, or distributed on account of, other Collateral, including dividends, interest, distributions and Instruments with respect to Investment Property and pledged Stock, and (f) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition of Collateral and all rights arising out of Collateral;

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"SECURED OBLIGATIONS" means all liability of the Grantor, whenever incurred or arising, under, for or in respect of the Notes, the Guarantees and any and all other present and future Note Obligations;

"SPECIFIED PRIORITY LIEN" means the Lien on the Collateral granted by the Grantor to the Credit Agreement Agent for the benefit of the Lenders under the Priority Security Agreement which Lien has priority to the Lien hereof to the extent and on the terms set forth in Article 10 of the Indenture;

"STOCK" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934);

"SUPPORTING OBLIGATIONS" means all "supporting obligations" as such term is defined in the Code, including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments or Investment Property;

"TRADEMARK SECURITY AGREEMENTS" means the Trademark Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"TRADEMARK LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right to use any Trademark; and

"TRADEMARKS" means all of the following now owned or hereafter existing, adopted or acquired by any Obligor: (a) all trademarks, trade names, limited liability company names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, (b) all reissues, extensions or renewals thereof, and (c) all goodwill associated with or symbolized by any of the foregoing.

## 2. GRANT OF LIEN

- (a) To secure the prompt and complete payment, performance and observance of all of the Secured Obligations, the Grantor hereby grants, assigns, conveys, mortgages, pledges, hypothecates and transfers to the Trustee as the Collateral Agent for the benefit of all of the present and future Holders of Secured Obligations, a Lien upon all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of the Grantor (including under any trade names, styles or derivations thereof), and whether owned or consigned by

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or to, or leased from or to the Grantor, and regardless of where located (all of which being hereinafter collectively referred to as the "COLLATERAL"), including:

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Documents;
- (iv) all General Intangibles (including payment intangibles and software, but excluding any Contract that by its terms prohibits any Lien, where such prohibition is effective under applicable law, including Sections 9-406 and 9-408 of the Code);
- (v) all Goods (including Inventory, P&E and Fixtures);
- (vi) all Instruments;
- (vii) all Investment Property;
- (viii) all Deposit Accounts;
- (ix) all money, cash or cash equivalents of the Grantor;
- (x) all Supporting Obligations and all Letter-of-Credit Rights of the Grantor;
- (xi) all commercial tort claims; and
- (xii) to the extent not otherwise included, all Proceeds, tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing;

PROVIDED, that the Collateral shall not include any property which is an Excluded Asset for as long as such property is an Excluded Asset, but if any such property at any time ceases to be an Excluded Asset, it shall immediately and automatically become part of the Collateral without need for any additional grant of a security interest therein.

- (b) In addition, to secure the prompt and complete payment, performance and observance of the Secured Obligations and in order to induce the Trustee and the Initial Purchasers as aforesaid, the Grantor hereby grants to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, a right of setoff against the property of the Grantor held by the Credit Agreement Agent, the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, consisting of property described above in Section 2(a) now or hereafter in the possession or custody of or in transit to the Credit Agreement Agent, the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, for any purpose, including safekeeping, collection or pledge, for the account of the Grantor, or as to which the Grantor may have any right or power.

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### 3. THE COLLATERAL AGENT'S RIGHTS; LIMITATIONS ON THE COLLATERAL AGENT'S OBLIGATIONS

- (a) It is expressly agreed by the Grantor that, anything herein to the contrary notwithstanding, the Grantor shall remain liable under each of its Contracts and each of its Licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Trustee, the Collateral Agent nor any present or future Holder of Secured Obligations shall have any obligation or liability under any Contract or License by reason of or arising out of this Security Agreement or the granting herein of a Lien thereon or the receipt by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations of any payment relating to any Contract or License pursuant hereto. Neither the Trustee, the Collateral Agent nor any present or future Holder of Secured Obligations shall be required or obligated in any manner to perform or fulfill any of the obligations of the Grantor under or pursuant to any Contract or License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or License, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which

may have been assigned to it or to which it may be entitled at any time or times.

- (b) Subject to Article 10 of the Indenture, the Collateral Agent may at any time after an Event of Default shall have occurred and be continuing (or if any rights of set-off (other than set-off against an Account arising under the Contract giving rise to the same Account) or contra accounts may be asserted with respect to the following), without prior notice to the Grantor, notify Account Debtors and other Persons obligated on the Collateral that the Collateral Agent has a security interest therein, and that payments shall be made directly to the Collateral Agent. Upon the request of the Collateral Agent, the Grantor shall notify Account Debtors and other Persons obligated on the Collateral. Once any such notice has been given to any Account Debtor or other Person obligated on such Collateral, the Grantor shall not give any contrary instructions to such Account Debtor or other such Person without the Collateral Agent's prior written consent.
- (c) Subject to Article 10 of the Indenture, the Collateral Agent may at any time in the name of the Grantor or if an Event of Default shall have occurred and be continuing, in the Collateral Agent's own name, or in the name of a nominee of the Collateral Agent, communicate (by mail, telephone, facsimile or otherwise) with Account Debtors, parties to Contracts, obligors in respect of Instruments and obligors in respect of Chattel Paper and/or payment intangibles to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount and terms of, and any other matter relating to, any such Accounts, Contracts, Instruments or Chattel Paper and/or payment intangibles. If a Default or Event of Default shall have occurred and be continuing, the Grantor, at its own expense, shall cause the independent certified public accountants then engaged by the Grantor to prepare and deliver to the Collateral Agent at any time and from time to time promptly upon the Collateral Agent's request the following reports with respect to the Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as the Collateral Agent may request. The Grantor, at its own expense, shall deliver to the Collateral Agent the results of each physical verification, if any, which the Grantor may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory.

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#### 4. REPRESENTATIONS AND WARRANTIES

The Grantor represents and warrants that:

- (a) The Grantor has rights in and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder free and clear of any and all Liens other than Permitted Liens (which Permitted Liens include the Specified Priority Lien).
- (b) No effective security agreement, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is on file or of record in any public office, except such as may have been filed (i) by the Grantor in favor of the Credit Agreement Agent pursuant to the Credit Agreement or the other Priority Lien Documents; (ii) by the Grantor in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations pursuant to this Security Agreement or the other Note Documents; and (iii) in connection with any other Permitted Liens pursuant to the Indenture.
- (c) This Security Agreement is effective to create a valid and continuing Lien on and, upon the filing of the appropriate financing statements in the filing offices listed on Schedule I hereto, a perfected Lien in favor of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, on the Collateral with respect to which a Lien may be perfected by filing pursuant to the Code. Such Lien is prior to all other Liens, except Priority Liens and Permitted Liens that would be prior to Liens in favor of the Collateral Agent as a matter of law, and is enforceable as such as against any and all creditors of and purchasers from the Grantor (other than purchasers and lessees of Inventory in the ordinary course of business). All action by the Grantor reasonably necessary or desirable to protect and perfect such Lien on each item of the Collateral has been duly taken.
- (d) Schedule II hereto lists all Instruments, Letter-of-Credit Rights and Chattel Paper of the Grantor. All action by the Grantor necessary or

desirable to protect and perfect the Lien of the Collateral Agent on each item set forth on Schedule II (including the delivery of all originals thereof to the Collateral Agent and the legending of all Chattel Paper as required by Section 5(b) hereof; PROVIDED that prior to the Discharge of Priority Lien Indebtedness, such items need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent) has been duly taken. The Lien of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, on the Collateral listed on Schedule II hereto is prior to all other Liens, except for Specified Priority Liens and Permitted Liens that would be prior to the Liens in favor of the Collateral Agent as a matter of law, and is enforceable as such against any and all creditors of and purchasers from the Grantor.

- (e) The Grantor's name as it appears in official filings in the state of its incorporation or other organization, the type of entity of the Grantor (including corporation, partnership, limited partnership or limited liability company), organizational identification number issued by the Grantor's state of incorporation or organization or a statement that no such number has been issued, the Grantor's state of organization or incorporation, the location of the Grantor's chief executive office, principal place of business, offices, all warehouses and premises where Collateral is stored or located, and the locations of all of its books and records concerning the Collateral are set forth on Schedule III hereto.

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- (f) With respect to the Accounts, (i) they represent bona fide sales of Inventory or rendering of services to Account Debtors in the ordinary course of the Grantor's business and are not evidenced by a judgment, Instrument or Chattel Paper; (ii) except as permitted under the Credit Agreement, there are no setoffs, claims or disputes existing or asserted with respect thereto and the Grantor has not made any agreement with any Account Debtor for any extension of time for the payment thereof, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance allowed by the Grantor in the ordinary course of its business for prompt payment and disclosed to the Collateral Agent; (iii) to the Grantor's knowledge, there are no facts, events or occurrences which are not permitted under the Credit Agreement which in any way impair the validity or enforceability thereof or could reasonably be expected to reduce the amount payable thereunder as shown on the Grantor's books and records and any invoices and statements delivered to the Collateral Agent with respect thereto; and (iv) the Grantor has not received any notice of proceedings or actions which are threatened or pending against any Account Debtor which might result in any adverse change in such Account Debtor's financial condition. Further with respect to the Accounts (x) the amounts shown on all invoices, statements and collateral reports which may be delivered to the Credit Agreement Agent or the Collateral Agent with respect thereto are actually and absolutely owing to the Grantor as indicated thereon and are not in any way contingent; (y) no payments have been or shall be made thereon except payments immediately delivered to the applicable Blocked Accounts, to Credit Agreement Agent or to the Collateral Agent; and (z) to the Grantor's knowledge, all Account Debtors have the capacity to contract.
- (g) With respect to any Inventory, (i) such Inventory is located at one of the Grantor's locations set forth on Schedule III hereto, PROVIDED that upon 15 days' prior written notice to the Collateral Agent and upon the Collateral Agent having filed UCC-1 financing statements, the Grantor may amend Schedule III; (ii) no Inventory is now, or shall at any time or times hereafter be stored at any other location without the Collateral Agent's prior consent, which shall not be unreasonably withheld, and if the Collateral Agent gives such consent, the Grantor will concurrently therewith obtain, to the extent required by the Indenture, bailee, landlord and mortgagee agreements; (iii) the Grantor has good, indefeasible and merchantable title to such Inventory and such Inventory is not subject to any Lien or security interest or document whatsoever except for the Priority Liens, the Lien granted to the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, and Permitted Liens pursuant to the Indenture; (iv) such Inventory is not subject to any licensing, patent, royalty, trademark, tradename or copyright agreements with any third parties which would require any consent of any third party upon sale or disposition of that Inventory or the payment of any monies to any third party as a precondition of such sale or other disposition; and (v) the completion of manufacture, sale

or other disposition of such Inventory by the Collateral Agent following an Event of Default shall not require the consent of any Person other than as provided in the Indenture and shall not constitute a breach or default under any contract or agreement to which the Grantor is a party or to which such property is subject.

- (h) The Grantor has no interest in, or title to, any Patent, Trademark or Copyright except as set forth in Schedule IV hereto. This Indenture is effective to create a valid and continuing Lien on and, upon filing of the Copyright Security Agreements with the United States Copyright Office and filing of the Patent Security Agreements and the Trademark Security Agreements with the United States Patent and Trademark Office, perfected Liens in favor of the Collateral Agent on the Grantor's Patents, Trademarks

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(other than state registered trademarks) and Copyrights and such perfected Liens are enforceable as such as against any and all creditors of and purchasers from the Grantor. Upon filing of the Copyright Security Agreements with the United States Copyright Office and filing of the Patent Security Agreements and the Trademark Security Agreements with the United States Patent and Trademark Office and the filing of appropriate financing statements listed on Schedule I hereto, all action necessary or desirable to protect and perfect the Collateral Agent's Lien on the Grantor's Patents, Trademarks (other than state registered trademarks) or Copyrights shall have been duly taken.

- (i) The Grantor does not hold for sale or lease or lease as lessor any goods that are covered by a certificate of title statute of any state other than goods of a kind that it is in the business of selling.
- (j) All motor vehicles owned by the Grantor which are P&E are listed on Schedule V hereto, by model, model year and vehicle identification number ("VIN") except in respect to any vehicles which are Excluded Assets. The Grantor shall provide notice to the Collateral Agent of, and deliver to the Collateral Agent motor vehicle title certificates for, all motor vehicles that are P&E and that are covered by a certificate of title from time to time owned by it, and shall cause such title certificates to be filed (with the Collateral Agent's lien noted thereon) in the appropriate state motor vehicle filing office; PROVIDED that prior to the Discharge of Priority Lien Indebtedness, such motor vehicle title certificates need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent.

## 5. COVENANTS

The Grantor covenants and agrees with the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, that from and after the date of this Security Agreement and until the date of termination of the Liens and this Security Agreement:

- (a) Further Assurances: Pledge of Instruments; Chattel Paper.
  - (i) At any time and from time to time, upon the written request of the Collateral Agent and at the sole expense of the Grantor, the Grantor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as the Collateral Agent may deem desirable to obtain the full benefits of this Security Agreement and of the rights and powers herein granted, including (A) using its best efforts to secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of the Collateral Agent of any License or Contract held by the Grantor and to enforce the security interests granted hereunder; and (B) filing any financing or continuation statements under the Uniform Commercial Code with respect to the Liens granted hereunder or under the Indenture or any other Note Document as to those jurisdictions that are not Uniform Commercial Code jurisdictions.
  - (ii) Unless the Collateral Agent shall otherwise consent in writing (which consent may be revoked), then upon, and concurrently with, the discharge of Priority Lien Indebtedness, without notice or demand, the Grantor shall deliver to the Collateral Agent all Collateral consisting of negotiable Documents, certificated securities, Chattel Paper and Instruments (in each case, accompanied by stock



powers, allonges or other instruments of transfer executed in blank) promptly after such the Grantor receives the same.

- (iii) The Grantor shall obtain or use its commercially reasonable best efforts to obtain waivers or subordinations of Liens from landlords and mortgagees, and the Grantor shall in all instances obtain signed acknowledgements of the Collateral Agent's Liens from bailees having possession of any of the Grantor's Goods that they hold for the benefit of Credit Agreement Agent or the Collateral Agent.
- (iv) The Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code or such jurisdiction; or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Grantor is an organization, the type of organization and any organization identification number issued to the Grantor; and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Grantor agrees to furnish any such information to the Collateral Agent promptly upon request. The Grantor also ratifies its authorization for the Collateral Agent to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.
- (v) The Grantor shall promptly, and in any event within two (2) Business Days after the same is acquired by it, notify the Collateral Agent of any commercial tort claim (as defined in the Code) acquired by it and unless otherwise consented by Credit Agreement Agent and the Collateral Agent, the Grantor shall enter into a supplement to this Security Agreement, granting to the Collateral Agent a Lien in such commercial tort claim.

(b) Maintenance of Records

The Grantor shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, including a record of any and all payments received and any and all credits granted with respect to the Collateral and all other dealings with the Collateral. The Grantor shall mark its books and records pertaining to the Collateral to evidence this Security Agreement and the Liens granted hereby. If in accordance with, and to the extent consistent with, the terms of the Indenture, the Grantor retains possession of any Chattel Paper or Instruments with the Collateral Agent's consent, such Chattel Paper and Instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of General Electric Capital Corporation, as Agent, for the benefit of Agent and certain Lenders and of The Bank of New York, as the Collateral Agent, for the benefit of the Collateral Agent and certain holders of Senior Notes."

(c) Covenants Regarding Patent, Trademark and Copyright Collateral

- (i) The Grantor shall notify the Collateral Agent immediately if it knows or has reason to know that any application or registration relating to any Patent, Trademark or Copyright (now or hereafter existing) may become abandoned or dedicated, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding the Grantor's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and

maintain the same.

- (ii) In no event shall the Grantor, either directly or through any agent, employee, licensee or designee, file an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency without giving the Collateral Agent prior written notice thereof, and, upon request of the Collateral Agent, the Grantor shall execute and deliver any and all Patent Security Agreements, Copyright Security Agreements or Trademark Security Agreements as the Collateral Agent may request to evidence the Collateral Agent's Lien on such Patent, Trademark or Copyright, and the General Intangibles of the Grantor relating thereto or represented thereby.
- (iii) The Grantor shall take all actions necessary or requested by the Collateral Agent to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of the Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless the Grantor shall determine that such Patent, Trademark or Copyright is not material to the conduct of its business.
- (iv) In the event that any of the Patent, Trademark or Copyright Collateral is infringed upon, or misappropriated or diluted by a third party, the Grantor shall notify the Collateral Agent promptly after the Grantor learns thereof. The Grantor shall, unless it shall reasonably determine that such Patent, Trademark or Copyright Collateral is in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as the Collateral Agent shall deem appropriate under the circumstances to protect such Patent, Trademark or Copyright Collateral.

(d) Indemnification

In any suit, proceeding or action brought by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations relating to any Collateral for any sum owing with respect thereto or to enforce any rights or claims with respect thereto, the Grantor will save, indemnify and keep the Trustee, the Collateral Agent and the present and future Holders of Secured Obligations harmless from and against all reasonable expense (including reasonable attorneys' fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the Account Debtor or other Person obligated on the Collateral, arising out of a breach by the Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to, or in favor of, such obligor or

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its successors from the Grantor, except in the case of the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, to the extent such expense, loss or damage is attributable solely to the gross negligence or willful misconduct of the Trustee, the Collateral Agent or such present or future Holder of Secured Obligations as finally determined by a court of competent jurisdiction. All such obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations.

(e) Compliance with Terms of Accounts, etc.

In all material respects, the Grantor will perform and comply with all obligations in respect of the Collateral and all other agreements to which it is a party or by which it is bound relating to the Collateral.

(f) Limitation on Liens on Collateral

The Grantor will not create, permit or suffer to exist, and will

defend the Collateral against, and take such other action as is necessary to remove, any Lien on the Collateral except Permitted Liens (including Specified Priority Liens), and will defend the right, title and interest of the Trustee, the Collateral Agent and the present and future Holders of Secured Obligations in and to any of the Grantor's rights under the Collateral against the claims and demands of all Persons whomsoever.

(g) Limitations on Disposition

The Grantor will not sell, license, lease, transfer or otherwise dispose of any of the Collateral, or attempt or contract to do so except as permitted by the Indenture.

(h) Notices

The Grantor will advise the Collateral Agent promptly, in reasonable detail, (i) of any Lien (other than Permitted Liens) or claim made or asserted against any of the Collateral; and (ii) of the occurrence of any other event which would have a material adverse effect on the aggregate value of the Collateral or on the Liens created hereunder or under the Indenture or any other Note Document.

(i) Further Identification of Collateral

The Grantor will, if so requested by the Collateral Agent, furnish to the Collateral Agent, as often as the Collateral Agent requests, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in such detail as the Collateral Agent may specify.

(j) Good Standing Certificates

At the request of the Collateral Agent, but not more frequently than once during each calendar quarter, the Grantor shall, unless the Collateral Agent shall otherwise consent, provide to the Collateral Agent a certificate of good standing from its state of incorporation or organization.

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(k) No Reincorporation

Without limiting the prohibitions on Change of Control involving the Grantor contained in the Indenture, the Grantor shall not reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof without the prior written consent of the Collateral Agent.

(l) Terminations; Amendments Not Authorized

The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of the Collateral Agent and agrees that it will not do so without the prior written consent of the Collateral Agent, subject to the Grantor's rights under Section 9-509(d)(2) of the Code.

(m) Authorized Terminations

All security interests granted herein shall continue until released in accordance with the Indenture.

(n) Government Contracts

The Grantor agrees that if they are a party to any contract or agreement with any Governmental Authority they will, if requested by the Collateral Agent, take such actions as may be necessary to comply with the Federal Assignment of Claims Act, as amended (31 U.S.C. Section 3727) or any similar state or local law pursuant to which the consideration due the Grantor thereunder is \$3,000,000 or more in the aggregate.

6. THE COLLATERAL AGENT'S APPOINTMENT AS ATTORNEY-IN-FACT

On the Closing Date, the Grantor shall execute and deliver to the Collateral Agent powers of attorney (collectively, the "POWER OF ATTORNEY") substantially in the forms attached hereto as Exhibit A-1 and A-2,

respectively. The powers of attorney granted pursuant to the Power of Attorney are powers coupled with an interest and shall be irrevocable until the payment and performance in full of the Secured Obligations. The powers conferred on the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, under the Power of Attorney are solely to protect the Collateral Agent's interests (for the benefit of the present and future Holders of Secured Obligations) in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent agrees that (a) except for the powers granted in clause (h) of the Power of Attorney, it shall not exercise any power or authority granted under the Power of Attorney unless an Event of Default has occurred and is continuing, (b) the exercise of any power or authority granted under the Power of Attorney shall be subject to Article 10 of the Indenture, and (c) the Collateral Agent shall account for any moneys received by the Collateral Agent in respect of any foreclosure on or disposition of Collateral pursuant to the Power of Attorney provided that neither the Collateral Agent nor any present or future Holder of Secured Obligations shall have any duty as to any Collateral, and the Collateral Agent and the present and future Holders of Secured Obligations shall be accountable only for amounts they actually receive as a result of the exercise of such powers. NONE OF THE COLLATERAL AGENT, THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO GRANTOR FOR ANY ACT OR

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FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES TO THE EXTENT ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

7. REMEDIES; RIGHTS UPON DEFAULT

(a) Subject to Article 10 of the Indenture: (i) in addition to all other rights and remedies granted to it under this Security Agreement, the Indenture, the other Note Documents and under any other instrument or agreement securing, evidencing or relating to any of the Secured Obligations, if any Event of Default shall have occurred and be continuing, the Collateral Agent may exercise all rights and remedies of a secured party under the Code; (ii) without limiting the generality of the foregoing, the Grantor expressly agrees that in any such event the Collateral Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code and other applicable law), may forthwith enter upon the premises of the Grantor where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving the Grantor or any other Person notice and opportunity for a hearing on the Collateral Agent's claim or action and may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, at any exchange at such prices as it may deem acceptable, for cash or on credit or for future delivery without assumption of any credit risk; (iii) the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the present and future Holders of Secured Obligations, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption the Grantor hereby releases; (iv) such sales may be adjourned and continued from time to time with or without notice; (v) the Collateral Agent shall have the right to conduct such sales on the Grantor's premises or elsewhere and shall have the right to use the Grantor's premises without charge for such time or times as the Collateral Agent deems necessary or advisable; (vi) if any Event of Default shall have occurred and be continuing, the Grantor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at a place or places designated by the Collateral Agent which are reasonably convenient to the Collateral Agent and the Grantor, whether at the Grantor's premises or elsewhere; (vii) until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right

to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent; (viii) the Collateral Agent shall have no obligation to the Grantor to maintain or preserve the rights of the Grantor as against third parties with respect to Collateral while Collateral is in the possession of the Collateral Agent; (ix) the Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the present and future Holders of Secured Obligations), with respect to such appointment

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without prior notice or hearing as to such appointment; (x) the Collateral Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale to the Secured Obligations as provided in the Indenture, and only after so applying such net proceeds, and after the payment by the Collateral Agent for application to amounts secured by the Priority Lien and after payment by the Collateral Agent of any other amount required by any provision of law, need the Collateral Agent account for the surplus, if any, to the Grantor; (xi) to the maximum extent permitted by applicable law, the Grantor waives all claims, damages, and demands against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations arising out of the repossession, retention or sale of the Collateral except to the extent arising out of the gross negligence or willful misconduct of the Trustee, the Collateral Agent or such present or future Holder of Secured Obligations as finally determined by a court of competent jurisdiction; (xii) the Grantor agrees that ten (10) days prior notice by the Collateral Agent of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters; and (xiii) the Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all of the Secured Obligations, including any attorneys' fees or other expenses incurred by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations to collect such deficiency.

- (b) Except as otherwise specifically provided herein, the Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Indenture or any Collateral.
- (c) To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, the Grantor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (i) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as the Grantor, for expressions of interest in acquiring all or any portion of such Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets; (ix) to dispose of assets in wholesale rather than retail markets; (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment; (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral; or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers,

Collateral Agent in the collection or disposition of any of the Collateral. The Grantor acknowledges that the purpose of this Section 7(c) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7(c). Without limitation upon the foregoing, nothing contained in this Section 7(c) shall be construed to grant any rights to the Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7(c).

- (d) Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall be required to make any demand upon, or pursue or exhaust any of their rights or remedies against, the Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof. Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, and all of its and their rights hereunder or under the Indenture or any other Note Document shall be cumulative. To the extent it may lawfully do so, the Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, any valuation, stay, appraisal, extension, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise.

8. GRANT OF LICENSE TO USE INTELLECTUAL PROPERTY

For the purpose of enabling the Collateral Agent to exercise rights and remedies under Section 7 hereof (including, without limiting the terms of Section 7 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby grants to the Collateral Agent, for the benefit of the Collateral Agent for the present and future Holders of Secured Obligations, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by the Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

9. LIMITATION ON THE COLLATERAL AGENT'S DUTY IN RESPECT OF COLLATERAL

The Collateral Agent shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any present or future Holder of Secured Obligations shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such present or future

Holder of Secured Obligations, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

10. REINSTATEMENT

This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of the

Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

#### 11. NOTICES

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give and serve upon any other party any communication with respect to this Security Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be given in the manner, and deemed received, as provided for under the Indenture.

#### 12. SEVERABILITY

Whenever possible, each provision of this Security Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. This Security Agreement is to be read, construed and applied together with the Indenture and the other Note Documents which, taken together, set forth the complete understanding and agreement of the Trustee, the Collateral Agent, the present and future Holders of Secured Obligations and the Grantor with respect to the matters referred to herein and therein.

#### 13. NO WAIVER; CUMULATIVE REMEDIES

Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Collateral Agent and then only to the extent therein set forth. A waiver by the Collateral Agent of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Collateral Agent would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, any right, power or

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privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. None of the terms or provisions of this Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the Collateral Agent and the Grantor.

#### 14. LIMITATION BY LAW

All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

#### 15. ASSIGNMENT

The Collateral Agent may assign all of its rights and delegate all of its obligations hereunder to any successor Collateral Agent as provided in the Indenture. The Collateral Agent and each Holder of Secured Obligations may assign, indorse or transfer any instrument evidencing all or any part of the Secured Obligations as provided in, and in accordance with, the Indenture, and the holder of such instrument shall be entitled to the

benefits of this Security Agreement.

16. TERMINATION OF THIS SECURITY AGREEMENT

The security interests granted hereby shall continue in full force and effect until released in accordance with the provisions of the Indenture.

17. SUCCESSORS AND ASSIGNS

This Security Agreement and all obligations of the Grantor hereunder shall be binding upon the successors and assigns of the Grantor (including any debtor-in-possession on behalf of the Grantor) and shall, together with the rights and remedies of the Trustee, the Collateral Agent, and the present and future Holders of Secured Obligations, hereunder, inure to the benefit of the Trustee, the Collateral Agent, and the present and future Holders of Secured Obligations, their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Secured Obligations or any portion thereof or interest therein shall in any manner affect the Lien granted to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, hereunder. The Grantor may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Security Agreement.

18. COUNTERPARTS

This Security Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one and the same agreement.

19. GOVERNING LAW

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EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE INDENTURE OR ANY OTHER NOTE DOCUMENT, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW). GRANTOR HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK, SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN GRANTOR, THE TRUSTEE, THE COLLATERAL AGENT OR ANY OF THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS PERTAINING TO THIS SECURITY AGREEMENT, THE INDENTURE OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT THE INDENTURE OR ANY OF THE OTHER NOTE DOCUMENTS, PROVIDED, THAT THE TRUSTEE, THE COLLATERAL AGENT, ANY OF THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS AND GRANTOR ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK, AND, PROVIDED, FURTHER, NOTHING IN THIS SECURITY AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE COLLATERAL AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE SECURED OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF COLLATERAL AGENT. GRANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND GRANTOR HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. GRANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO GRANTOR AT THE ADDRESS SET FORTH IN THE INDENTURE AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILES, PROPER POSTAGE PREPAID.

20. WAIVER OF JURY TRIAL

BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT DISPUTES ARISING HEREUNDER OR RELATING HERETO BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG THE



TRUSTEE, THE COLLATERAL AGENT, THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS AND GRANTOR ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED IN CONNECTION WITH, THIS SECURITY AGREEMENT OR ANY OF THE OTHER NOTE DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO.

21. INDEMNIFICATION

The Grantor will pay, reimburse the Trustee, the Collateral Agent and the Holders of Notes for, and to the fullest extent lawful defend and indemnify each of them against, all claims, liabilities, taxes, costs and expenses of every type and nature (including, without limitation, the reasonable fees and charges of attorneys, advisors, auditors and consultants acting for any of them) incurred by any of them as a result of or in connection with the creation, perfection, protection or enforcement of the security interests granted hereby or the exercise or enforcement of any right or remedy under this Security Agreement or to prove, preserve, protect or enforce any such security interest or any claim based upon such security interests in any lawsuit, bankruptcy case or other insolvency or liquidation proceeding.

In accepting, holding and enforcing the security interests, rights and remedies granted hereby or arising hereunder or otherwise acting as Collateral Agent, the Collateral Agent may rely upon and enforce each and all of the provisions of Article 7 of the Indenture conferring any rights, powers, immunities, indemnities or benefits upon the Trustee, including (without limitation) the indemnification provided by Section 7.07(a) of the Indenture, and the Grantor agrees to be bound by each and all of such provisions as fully as if set forth at length herein.

22. SECTION TITLES

The Section titles contained in this Security Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

23. NO STRICT CONSTRUCTION

The parties hereto have participated jointly in the negotiation and drafting of this Security Agreement. In the event an ambiguity or question of intent or interpretation arises, this Security Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Security Agreement.

24. ADVICE OF COUNSEL

Each of the parties represents to each other party hereto that it has discussed this Security Agreement and, specifically, the provisions of Section 19 and Section 20, with its counsel.

25. BENEFIT OF HOLDERS

All Liens granted or contemplated hereby shall be for the benefit of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Indenture.

IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

H&E FINANCE CORP.,  
as the Grantor

By: /s/ T. Eastman  
Name: T. Eastman  
Title: CFO and Assistant Secretary

THE BANK OF NEW YORK,  
as the Trustee and the Collateral Agent

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory

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EXHIBIT A-1

POWER OF ATTORNEY

This Power of Attorney is executed and delivered by H&E Finance Corp., a Delaware corporation (the "GRANTOR"), to The Bank of New York (hereinafter referred to as "ATTORNEY"), as the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, under an Indenture dated as of June 17, 2002 and a Security Agreement dated as of June 17, 2002, and other related documents (each as further amended, modified or supplemented, as applicable, from time to time, the "NOTE DOCUMENTS"). No person to whom this Power of Attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from the Grantor as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and the Grantor irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this Power of Attorney. The power of attorney granted hereby is coupled with an interest, and may not be revoked or canceled by the Grantor without Attorney's written consent.

The Grantor hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), with full power of substitution, as the Grantor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in the name of the Grantor or in its own name, from time to time in Attorney's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purposes of the Note Documents, and, without limiting the generality of the foregoing, the Grantor hereby grants to Attorney the power and right, on behalf of the Grantor, without notice to or assent by the Grantor, and at any time, to do the following: (a) change the mailing address of the Grantor, open a post office box on behalf of the Grantor, open mail for the Grantor, and ask, demand, collect, give acquittances and receipts for, take possession of, endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in connection with any property of the Grantor; (b) effect any repairs to any asset of the Grantor, or continue to obtain any insurance and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any taxes, liens, security interests, or other encumbrances levied or placed on or threatened against the Grantor or its property; (d) defend any suit, action or proceeding brought against the Grantor if the Grantor does not defend such suit, action or proceeding or if Attorney believes that the Grantor is not pursuing such defense in a manner that will maximize the recovery to Attorney, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Attorney may deem appropriate; (e) file or prosecute any claim, litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Attorney for the purpose of collecting any and all such moneys due to the Grantor whenever payable and to enforce any other right in respect of the Grantor's property; (f) cause the certified public accountants then engaged by the Grantor to prepare and deliver to Attorney at any time and from time to time, promptly upon Attorney's request, the following reports: (1) a reconciliation of all accounts, (2) an aging of all accounts, (3) trial balances, (4) test verifications of such accounts as Attorney may request, and (5) the results of each physical verification of inventory; (g) communicate in its own name with any party to any Contract with regard to the assignment of the right, title and interest of the Grantor in and under the Contracts and other matters relating thereto; (h) to file such financing statements with respect to the Security Agreement, with or without the Grantor's signature, or to file a photocopy of the Security Agreement in substitution for a financing statement, as the Agent may deem appropriate and to execute in

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the Grantor's name such financing statements and amendments thereto and continuation statements which may require the Grantor's signature; and (i) execute, in connection with any sale provided for in any Note Document, any

endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral and to otherwise direct such sale or resale, all as though Attorney were the absolute owner of the property of the Grantor for all purposes, and to do, at Attorney's option and the Grantor's expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary to perfect, preserve, or realize upon the Grantor's property or assets and Attorney's Liens thereon, all as fully and effectively as the Grantor might do. The Grantor hereby ratifies, to the extent permitted by law, all that said Attorney shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, this Power of Attorney is executed by the Grantor and the Grantor has caused its seal to be affixed pursuant to the authority of its board of directors on June \_\_, 2002.

ATTEST:

By: /s/ T. Eastman  
Name: T. Eastman  
Title: CFO

NOTARY PUBLIC CERTIFICATE

On this 16 day of June, 2002, Terence Eastman who is personally known to me appeared before me in his/her capacity as the Chief Financial Officer of H&E Finance Corp. (the "Grantor") and executed on behalf of the Grantor the Power of Attorney in favor of The Bank of New York to which this Certificate is attached.

/s/ Jeffrey Gimpel

-----  
Notary Public

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EXHIBIT A-2

POWER OF ATTORNEY

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF NEW YORK )

KNOW ALL MEN BY THESE PRESENTS, H&E Finance Corp., a Delaware corporation with its principal place of business at 11100 Mead, 2nd Floor, Baton Rouge, LA 70816 (hereinafter called the "GRANTOR"), hereby appoints and constitutes The Bank of New York (the "SECURED PARTY") as the Trustee and the Collateral Agent under an Indenture dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among, INTER ALIA, the Grantor and Secured Party, its true and lawful attorney, with full power of substitution, and with full power and authority, upon the occurrence and during the continuance of an Event of Default (defined in the Indenture) to perform the following acts on behalf of the Grantor:

- (i) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of the Grantor in and to any letters patent, design and plant patents, utility models, industrial designs, inventory certificates and statutory invention registrations of the United States or any other country or political subdivision thereof, and all registrations, recordings, reissues, continuations, continuations-in-part, term restorations and extensions thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose;
- (ii) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of Debtor in and to any trademarks, trade names, trade styles and service marks, and all registrations, recordings, reissues, extensions and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose;
- (iii) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of Debtor in and to any copyrights, and all registrations, recordings, extensions and renewals thereof, and all

pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose; and

- (iv) To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Secured Party may in its sole but reasonable discretion determine.

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This power of attorney is made pursuant to a Copyright Security Agreement, a Patent Security Agreement and a Trademark Security Agreement, each of which is dated the date hereof, as amended from time to time, by the Grantor in favor of Secured Party and will take effect solely for the purposes of Section 7 of the Security Agreement and is subject to the conditions thereof and may not be revoked until the payment or performance in full of all "Note Obligations" as defined in the Indenture.

Dated as of June 17, 2002.

H&E FINANCE CORP.

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: SVP Finance and Secretary

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GNE INVESTMENTS, INC. SECURITY AGREEMENT  
(IN FAVOR OF THE COLLATERAL AGENT)

THIS SECURITY AGREEMENT, dated as of June 17, 2002 (this "SECURITY AGREEMENT") is entered into by and between GNE Investments, Inc., a Washington corporation (the "GRANTOR"), and The Bank of New York, in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among H&E Equipment Services L.L.C., a Louisiana limited liability company ("H&E"), H&E Finance Corp., a Delaware corporation (together with H&E, each individually an "ISSUER" and collectively the "ISSUERS"), the Grantor, as a guarantor, together with the other guarantors named therein and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain GNE Investments, Inc. Security Agreement dated as of the date hereof by the Grantor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT") (such document, as amended, modified or supplemented from time to time, the "PRIORITY SECURITY AGREEMENT"), the Grantor has granted to the Credit Agreement Agent a first-priority lien and security interest in the Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "CREDIT AGREEMENT") among H&E, Great Northern Equipment, Inc., a Montana corporation (together with the Grantor, each individually, a "BORROWER", and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the Grantor, as a credit party, together with the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor, pursuant to the terms of the Indenture, has agreed to grant the Collateral Agent a continuing Lien on the Collateral (as defined below) and a security interest in the Collateral in accordance with this Security Agreement; and
- (D) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Security Agreement as security for the Secured Obligations upon any and all of the Collateral are subordinate in ranking to all present and future Priority Liens upon any and all of the Collateral; and (ii) the Note Liens upon any and all Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor hereby agrees with the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations (as defined below) as follows:

1. DEFINED TERMS

(a) Unless otherwise defined herein, terms defined in the Indenture and used herein have the meanings given to them in the Indenture. All other undefined terms contained in this Security Agreement, unless the context indicates otherwise, have the meanings provided for by Article 9 of the New York Uniform Commercial Code (the "CODE") to the extent the same are used or defined therein.

(b) The following shall have (unless otherwise provided elsewhere in this Security Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"ACCOUNT DEBTOR" means any Person who may become obligated to an Obligor under, with respect to, or on account of, an Account, Chattel Paper or General Intangibles (including a payment intangible);

"ACCOUNTS" means all "accounts," as such term is defined in the Code, now owned or hereafter acquired by any Obligor including (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper, or Instruments), (including any such obligations that may be characterized as an account or contract right under the Code), (b) all of each Obligor's rights in, to and under all purchase orders or receipts for goods or services, (c) all of each Obligor's rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to any Obligor for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Obligor or in connection with any other transaction (whether or not yet earned by performance on the part of such Obligor), (e) all health care insurance receivables and (f) all collateral security of any kind, given by any Account Debtor or any other Person with respect to any of the foregoing;

"CHATTEL PAPER" means any "chattel paper," as such term is defined in the Code, including electronic chattel paper, now owned or hereafter acquired by any Obligor;

"COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"CONTRACTS" means all "contracts," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, in any event, including all contracts, undertakings, or agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which any Obligor may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account;

"COPYRIGHT LICENSE" means any and all rights now owned or hereafter acquired by any Obligor under any written agreement granting any right to use any Copyright or Copyright registration;

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"COPYRIGHT SECURITY AGREEMENTS" means the Copyright Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"COPYRIGHTS" means all of the following now owned or hereafter acquired by any Obligor: (a) all copyrights and General Intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof;

"DEPOSIT ACCOUNTS" means all "deposit accounts" as such term is defined in the Code, now or hereafter held in the name of any Obligor;

"DOCUMENTS" means all "documents," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located;

"EQUIPMENT INVENTORY" means Inventory of any Borrower consisting of equipment held for sale or lease to third parties

and equipment while on lease to third parties;

"FIXTURES" means all "fixtures" as such term is defined in the Code, now owned or hereafter acquired by any Obligor;

"GENERAL INTANGIBLES" means all "general intangibles," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, including all right, title and interest that such Obligor may now or hereafter have in or under any Contract, all payment intangibles, customer lists, Licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark License), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including without limitation all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Obligor or any computer bureau or service company from time to time acting for such Obligor;

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"GOODS" means all "goods" as defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, including embedded software to the extent included in "goods" as defined in the Code, manufactured homes, standing timber that is cut and removed for sale and unborn young of animals;

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"INSTRUMENTS" means any "instrument," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper;

"INTELLECTUAL PROPERTY" means any and all Licenses, Patents, Copyrights, Trademarks, and the goodwill associated with such Trademarks;

"INVENTORY" means all "inventory," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Obligor for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind, nature or description used or consumed or to be used or consumed in such Obligor's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software;

"INVESTMENT PROPERTY" means all "investment property" as such term is defined in the Code now owned or hereafter acquired by any Obligor, wherever located, including (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund

shares; (ii) all securities entitlements of any Obligor, including the rights of any Obligor to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account; (iii) all securities accounts of any Obligor; (iv) all commodity contracts of any Obligor; and (v) all commodity accounts of any Obligor;

"LETTER-OF-CREDIT RIGHTS" means "letter-of-credit rights" as such term is defined in the Code, now owned or hereafter acquired by any Obligor, including rights to payment or performance under a letter of credit, whether or not such Obligor, as beneficiary, has demanded or is entitled to demand payment or performance;

"LICENSE" means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by any Obligor;

"PATENT LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right with respect to any invention on which a Patent is in existence;

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"PATENT SECURITY AGREEMENTS" means the Patent Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"PATENTS" means all of the following in which any Obligor now holds or hereafter acquires any interest: (a) all letters patent of the United States or of any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or any other country, and (b) all reissues, continuations, continuations-in-part or extensions thereof;

"P&E" means all "equipment," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located and, in any event, including all such Obligor's machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto. P&E excludes Equipment Inventory and Fixtures;

"PROCEEDS" means "proceeds," as such term is defined in the Code, including (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Obligor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to any Obligor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting under color of governmental authority), (c) any claim of any Obligor against third parties (i) for past, present or future infringement of any Patent or Patent License, or (ii) for past, present or future infringement or dilution of any Copyright, Copyright License, Trademark or Trademark License, or for injury to the goodwill associated with any Trademark or Trademark License, (d) any recoveries by any Obligor against third parties with respect to any litigation or dispute concerning any of the Collateral,



including claims arising out of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral, (e) all amounts collected on, or distributed on account of, other Collateral, including dividends, interest, distributions and Instruments with respect to Investment Property and pledged Stock, and (f) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition of Collateral and all rights arising out of Collateral;

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"SECURED OBLIGATIONS" means all liability of the Grantor, whenever incurred or arising, under, for or in respect of the Notes, the Guarantees and any and all other present and future Note Obligations;

"SPECIFIED PRIORITY LIEN" means the Lien on the Collateral granted by the Grantor to the Credit Agreement Agent for the benefit of the Lenders under the Priority Security Agreement which Lien has priority to the Lien hereof to the extent and on the terms set forth in Article 10 of the Indenture;

"STOCK" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934);

"SUPPORTING OBLIGATIONS" means all "supporting obligations" as such term is defined in the Code, including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments or Investment Property;

"TRADEMARK SECURITY AGREEMENTS" means the Trademark Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"TRADEMARK LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right to use any Trademark; and

"TRADEMARKS" means all of the following now owned or hereafter existing, adopted or acquired by any Obligor: (a) all trademarks, trade names, limited liability company names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, (b) all reissues, extensions or renewals thereof, and (c) all goodwill associated with or symbolized by any of the foregoing.

## 2. GRANT OF LIEN

- (a) To secure the prompt and complete payment, performance and observance of all of the Secured Obligations, the Grantor hereby grants, assigns, conveys, mortgages, pledges, hypothecates and transfers to the Trustee as the Collateral Agent for the benefit of all of the present and future Holders of Secured Obligations, a Lien upon all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of the Grantor (including under any trade names, styles or derivations thereof), and whether owned or consigned by

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or to, or leased from or to the Grantor, and regardless of where

located (all of which being hereinafter collectively referred to as the "COLLATERAL"), including:

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Documents;
- (iv) all General Intangibles (including payment intangibles and software, but excluding any Contract that by its terms prohibits any Lien, where such prohibition is effective under applicable law, including Sections 9-406 and 9-408 of the Code);
- (v) all Goods (including Inventory, P&E and Fixtures);
- (vi) all Instruments;
- (vii) all Investment Property;
- (viii) all Deposit Accounts;
- (ix) all money, cash or cash equivalents of the Grantor;
- (x) all Supporting Obligations and all Letter-of-Credit Rights of the Grantor;
- (xi) all commercial tort claims; and
- (xii) to the extent not otherwise included, all Proceeds, tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing;

PROVIDED, that the Collateral shall not include any property which is an Excluded Asset for as long as such property is an Excluded Asset, but if any such property at any time ceases to be an Excluded Asset, it shall immediately and automatically become part of the Collateral without need for any additional grant of a security interest therein.

- (b) In addition, to secure the prompt and complete payment, performance and observance of the Secured Obligations and in order to induce the Trustee and the Initial Purchasers as aforesaid, the Grantor hereby grants to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, a right of setoff against the property of the Grantor held by the Credit Agreement Agent, the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, consisting of property described above in Section 2(a) now or hereafter in the possession or custody of or in transit to the Credit Agreement Agent, the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, for any purpose, including safekeeping, collection or pledge, for the account of the Grantor, or as to which the Grantor may have any right or power.

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### 3. THE COLLATERAL AGENT'S RIGHTS; LIMITATIONS ON THE COLLATERAL AGENT'S OBLIGATIONS

- (a) It is expressly agreed by the Grantor that, anything herein to the contrary notwithstanding, the Grantor shall remain liable under each of its Contracts and each of its Licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Trustee, the Collateral Agent nor any present or future Holder of Secured Obligations shall have any obligation or liability under any Contract or License by reason of or arising out of this Security Agreement or the granting herein of a Lien thereon or the receipt by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations of any payment relating to any Contract or License pursuant hereto. Neither the Trustee, the Collateral Agent nor any present or future Holder of Secured Obligations shall be required or obligated in any manner to perform or fulfill any of the obligations of the Grantor under or pursuant to any Contract or License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or

License, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

- (b) Subject to Article 10 of the Indenture, the Collateral Agent may at any time after an Event of Default shall have occurred and be continuing (or if any rights of set-off (other than set-off against an Account arising under the Contract giving rise to the same Account) or contra accounts may be asserted with respect to the following), without prior notice to the Grantor, notify Account Debtors and other Persons obligated on the Collateral that the Collateral Agent has a security interest therein, and that payments shall be made directly to the Collateral Agent. Upon the request of the Collateral Agent, the Grantor shall notify Account Debtors and other Persons obligated on the Collateral. Once any such notice has been given to any Account Debtor or other Person obligated on such Collateral, the Grantor shall not give any contrary instructions to such Account Debtor or other such Person without the Collateral Agent's prior written consent.
- (c) Subject to Article 10 of the Indenture, the Collateral Agent may at any time in the name of the Grantor or if an Event of Default shall have occurred and be continuing, in the Collateral Agent's own name, or in the name of a nominee of the Collateral Agent, communicate (by mail, telephone, facsimile or otherwise) with Account Debtors, parties to Contracts, obligors in respect of Instruments and obligors in respect of Chattel Paper and/or payment intangibles to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount and terms of, and any other matter relating to, any such Accounts, Contracts, Instruments or Chattel Paper and/or payment intangibles. If a Default or Event of Default shall have occurred and be continuing, the Grantor, at its own expense, shall cause the independent certified public accountants then engaged by the Grantor to prepare and deliver to the Collateral Agent at any time and from time to time promptly upon the Collateral Agent's request the following reports with respect to the Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as the Collateral Agent may request. The Grantor, at its own expense, shall deliver to the Collateral Agent the results of each physical verification, if any, which the Grantor may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory.

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#### 4. REPRESENTATIONS AND WARRANTIES

The Grantor represents and warrants that:

- (a) The Grantor has rights in and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder free and clear of any and all Liens other than Permitted Liens (which Permitted Liens include the Specified Priority Lien).
- (b) No effective security agreement, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is on file or of record in any public office, except such as may have been filed (i) by the Grantor in favor of the Credit Agreement Agent pursuant to the Credit Agreement or the other Priority Lien Documents; (ii) by the Grantor in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations pursuant to this Security Agreement or the other Note Documents; and (iii) in connection with any other Permitted Liens pursuant to the Indenture.
- (c) This Security Agreement is effective to create a valid and continuing Lien on and, upon the filing of the appropriate financing statements in the filing offices listed on Schedule I hereto, a perfected Lien in favor of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, on the Collateral with respect to which a Lien may be perfected by filing pursuant to the Code. Such Lien is prior to all other Liens, except Priority Liens and Permitted Liens that would be prior to Liens in favor of the Collateral Agent as a matter of law, and is enforceable as such as against any and all creditors of and purchasers from the Grantor (other than purchasers and lessees of Inventory in the ordinary course of business). All action by the Grantor reasonably necessary or desirable to protect and perfect such Lien on each item of the Collateral has been duly taken.

- (d) Schedule II hereto lists all Instruments, Letter-of-Credit Rights and Chattel Paper of the Grantor. All action by the Grantor necessary or desirable to protect and perfect the Lien of the Collateral Agent on each item set forth on Schedule II (including the delivery of all originals thereof to the Collateral Agent and the legending of all Chattel Paper as required by Section 5(b) hereof; PROVIDED that prior to the Discharge of Priority Lien Indebtedness, such items need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent) has been duly taken. The Lien of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, on the Collateral listed on Schedule II hereto is prior to all other Liens, except for Specified Priority Liens and Permitted Liens that would be prior to the Liens in favor of the Collateral Agent as a matter of law, and is enforceable as such against any and all creditors of and purchasers from the Grantor.
- (e) The Grantor's name as it appears in official filings in the state of its incorporation or other organization, the type of entity of the Grantor (including corporation, partnership, limited partnership or limited liability company), organizational identification number issued by the Grantor's state of incorporation or organization or a statement that no such number has been issued, the Grantor's state of organization or incorporation, the location of the Grantor's chief executive office, principal place of business, offices, all warehouses and premises where Collateral is stored or located, and the locations of all of its books and records concerning the Collateral are set forth on Schedule III hereto.

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- (f) With respect to the Accounts, (i) they represent bona fide sales of Inventory or rendering of services to Account Debtors in the ordinary course of the Grantor's business and are not evidenced by a judgment, Instrument or Chattel Paper; (ii) except as permitted under the Credit Agreement, there are no setoffs, claims or disputes existing or asserted with respect thereto and the Grantor has not made any agreement with any Account Debtor for any extension of time for the payment thereof, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance allowed by the Grantor in the ordinary course of its business for prompt payment and disclosed to the Collateral Agent; (iii) to the Grantor's knowledge, there are no facts, events or occurrences which are not permitted under the Credit Agreement which in any way impair the validity or enforceability thereof or could reasonably be expected to reduce the amount payable thereunder as shown on the Grantor's books and records and any invoices and statements delivered to the Collateral Agent with respect thereto; and (iv) the Grantor has not received any notice of proceedings or actions which are threatened or pending against any Account Debtor which might result in any adverse change in such Account Debtor's financial condition. Further with respect to the Accounts (x) the amounts shown on all invoices, statements and collateral reports which may be delivered to the Credit Agreement Agent or the Collateral Agent with respect thereto are actually and absolutely owing to the Grantor as indicated thereon and are not in any way contingent; (y) no payments have been or shall be made thereon except payments immediately delivered to the applicable Blocked Accounts, to Credit Agreement Agent or to the Collateral Agent; and (z) to the Grantor's knowledge, all Account Debtors have the capacity to contract.
- (g) With respect to any Inventory, (i) such Inventory is located at one of the Grantor's locations set forth on Schedule III hereto, PROVIDED that upon 15 days' prior written notice to the Collateral Agent and upon the Collateral Agent having filed UCC-1 financing statements, the Grantor may amend Schedule III; (ii) no Inventory is now, or shall at any time or times hereafter be stored at any other location without the Collateral Agent's prior consent, which shall not be unreasonably withheld, and if the Collateral Agent gives such consent, the Grantor will concurrently therewith obtain, to the extent required by the Indenture, bailee, landlord and mortgagee agreements; (iii) the Grantor has good, indefeasible and merchantable title to such Inventory and such Inventory is not subject to any Lien or security interest or document whatsoever except for the Priority Liens, the Lien granted to the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, and Permitted Liens pursuant to the Indenture; (iv) such Inventory is not subject to any licensing, patent, royalty, trademark, tradename or copyright agreements with any third parties which would require any consent of any third party upon sale or disposition of that Inventory or the

payment of any monies to any third party as a precondition of such sale or other disposition; and (v) the completion of manufacture, sale or other disposition of such Inventory by the Collateral Agent following an Event of Default shall not require the consent of any Person other than as provided in the Indenture and shall not constitute a breach or default under any contract or agreement to which the Grantor is a party or to which such property is subject.

- (h) The Grantor has no interest in, or title to, any Patent, Trademark or Copyright except as set forth in Schedule IV hereto. This Indenture is effective to create a valid and continuing Lien on and, upon filing of the Copyright Security Agreements with the United States Copyright Office and filing of the Patent Security Agreements and the Trademark Security Agreements with the United States Patent and Trademark Office, perfected Liens in favor of the Collateral Agent on the Grantor's Patents, Trademarks

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(other than state registered trademarks) and Copyrights and such perfected Liens are enforceable as such as against any and all creditors of and purchasers from the Grantor. Upon filing of the Copyright Security Agreements with the United States Copyright Office and filing of the Patent Security Agreements and the Trademark Security Agreements with the United States Patent and Trademark Office and the filing of appropriate financing statements listed on Schedule I hereto, all action necessary or desirable to protect and perfect the Collateral Agent's Lien on the Grantor's Patents, Trademarks (other than state registered trademarks) or Copyrights shall have been duly taken.

- (i) The Grantor does not hold for sale or lease or lease as lessor any goods that are covered by a certificate of title statute of any state other than goods of a kind that it is in the business of selling.
- (j) All motor vehicles owned by the Grantor which are P&E are listed on Schedule V hereto, by model, model year and vehicle identification number ("VIN") except in respect to any vehicles which are Excluded Assets. The Grantor shall provide notice to the Collateral Agent of, and deliver to the Collateral Agent motor vehicle title certificates for, all motor vehicles that are P&E and that are covered by a certificate of title from time to time owned by it, and shall cause such title certificates to be filed (with the Collateral Agent's lien noted thereon) in the appropriate state motor vehicle filing office; PROVIDED that prior to the Discharge of Priority Lien Indebtedness, such motor vehicle title certificates need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent.

## 5. COVENANTS

The Grantor covenants and agrees with the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, that from and after the date of this Security Agreement and until the date of termination of the Liens and this Security Agreement:

- (a) Further Assurances: Pledge of Instruments; Chattel Paper.
- (i) At any time and from time to time, upon the written request of the Collateral Agent and at the sole expense of the Grantor, the Grantor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as the Collateral Agent may deem desirable to obtain the full benefits of this Security Agreement and of the rights and powers herein granted, including (A) using its best efforts to secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of the Collateral Agent of any License or Contract held by the Grantor and to enforce the security interests granted hereunder; and (B) filing any financing or continuation statements under the Uniform Commercial Code with respect to the Liens granted hereunder or under the Indenture or any other Note Document as to those jurisdictions that are not Uniform Commercial Code jurisdictions.
- (ii) Unless the Collateral Agent shall otherwise consent in writing (which consent may be revoked), then upon, and concurrently with, the discharge of Priority Lien Indebtedness, without notice or demand, the Grantor shall deliver to the Collateral Agent all Collateral consisting of negotiable Documents,

powers, allonges or other instruments of transfer executed in blank) promptly after such the Grantor receives the same.

- (iii) The Grantor shall obtain or use its commercially reasonable best efforts to obtain waivers or subordinations of Liens from landlords and mortgagees, and the Grantor shall in all instances obtain signed acknowledgements of the Collateral Agent's Liens from bailees having possession of any of the Grantor's Goods that they hold for the benefit of Credit Agreement Agent or the Collateral Agent.
- (iv) The Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code or such jurisdiction; or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Grantor is an organization, the type of organization and any organization identification number issued to the Grantor; and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Grantor agrees to furnish any such information to the Collateral Agent promptly upon request. The Grantor also ratifies its authorization for the Collateral Agent to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.
- (v) The Grantor shall promptly, and in any event within two (2) Business Days after the same is acquired by it, notify the Collateral Agent of any commercial tort claim (as defined in the Code) acquired by it and unless otherwise consented by Credit Agreement Agent and the Collateral Agent, the Grantor shall enter into a supplement to this Security Agreement, granting to the Collateral Agent a Lien in such commercial tort claim.

(b) Maintenance of Records

The Grantor shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, including a record of any and all payments received and any and all credits granted with respect to the Collateral and all other dealings with the Collateral. The Grantor shall mark its books and records pertaining to the Collateral to evidence this Security Agreement and the Liens granted hereby. If in accordance with, and to the extent consistent with, the terms of the Indenture, the Grantor retains possession of any Chattel Paper or Instruments with the Collateral Agent's consent, such Chattel Paper and Instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of General Electric Capital Corporation, as Agent, for the benefit of Agent and certain Lenders and of The Bank of New York, as the Collateral Agent, for the benefit of the Collateral Agent and certain holders of Senior Notes."

(c) Covenants Regarding Patent, Trademark and Copyright Collateral

- (i) The Grantor shall notify the Collateral Agent immediately if it knows or has reason to know that any application or registration relating to any Patent, Trademark or Copyright (now or hereafter existing) may become abandoned or dedicated, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court)

regarding the Grantor's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same.

- (ii) In no event shall the Grantor, either directly or through any agent, employee, licensee or designee, file an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency without giving the Collateral Agent prior written notice thereof, and, upon request of the Collateral Agent, the Grantor shall execute and deliver any and all Patent Security Agreements, Copyright Security Agreements or Trademark Security Agreements as the Collateral Agent may request to evidence the Collateral Agent's Lien on such Patent, Trademark or Copyright, and the General Intangibles of the Grantor relating thereto or represented thereby.
- (iii) The Grantor shall take all actions necessary or requested by the Collateral Agent to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of the Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless the Grantor shall determine that such Patent, Trademark or Copyright is not material to the conduct of its business.
- (iv) In the event that any of the Patent, Trademark or Copyright Collateral is infringed upon, or misappropriated or diluted by a third party, the Grantor shall notify the Collateral Agent promptly after the Grantor learns thereof. The Grantor shall, unless it shall reasonably determine that such Patent, Trademark or Copyright Collateral is in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as the Collateral Agent shall deem appropriate under the circumstances to protect such Patent, Trademark or Copyright Collateral.

(d) Indemnification

In any suit, proceeding or action brought by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations relating to any Collateral for any sum owing with respect thereto or to enforce any rights or claims with respect thereto, the Grantor will save, indemnify and keep the Trustee, the Collateral Agent and the present and future Holders of Secured Obligations harmless from and against all reasonable expense (including reasonable attorneys' fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the Account Debtor or other Person obligated on the Collateral, arising out of a breach by the Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to, or in favor of, such obligor or

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its successors from the Grantor, except in the case of the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, to the extent such expense, loss or damage is attributable solely to the gross negligence or willful misconduct of the Trustee, the Collateral Agent or such present or future Holder of Secured Obligations as finally determined by a court of competent jurisdiction. All such obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations.

(e) Compliance with Terms of Accounts, etc.

In all material respects, the Grantor will perform and comply with all obligations in respect of the Collateral and all other agreements to which it is a party or by which it is bound relating to the Collateral.

(f) Limitation on Liens on Collateral

The Grantor will not create, permit or suffer to exist, and will defend the Collateral against, and take such other action as is necessary to remove, any Lien on the Collateral except Permitted Liens (including Specified Priority Liens), and will defend the right, title and interest of the Trustee, the Collateral Agent and the present and future Holders of Secured Obligations in and to any of the Grantor's rights under the Collateral against the claims and demands of all Persons whomsoever.

(g) Limitations on Disposition

The Grantor will not sell, license, lease, transfer or otherwise dispose of any of the Collateral, or attempt or contract to do so except as permitted by the Indenture.

(h) Notices

The Grantor will advise the Collateral Agent promptly, in reasonable detail, (i) of any Lien (other than Permitted Liens) or claim made or asserted against any of the Collateral; and (ii) of the occurrence of any other event which would have a material adverse effect on the aggregate value of the Collateral or on the Liens created hereunder or under the Indenture or any other Note Document.

(i) Further Identification of Collateral

The Grantor will, if so requested by the Collateral Agent, furnish to the Collateral Agent, as often as the Collateral Agent requests, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in such detail as the Collateral Agent may specify.

(j) Good Standing Certificates

At the request of the Collateral Agent, but not more frequently than once during each calendar quarter, the Grantor shall, unless the Collateral Agent shall otherwise consent, provide to the Collateral Agent a certificate of good standing from its state of incorporation or organization.

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(k) No Reincorporation

Without limiting the prohibitions on Change of Control involving the Grantor contained in the Indenture, the Grantor shall not reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof without the prior written consent of the Collateral Agent.

(l) Terminations; Amendments Not Authorized

The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of the Collateral Agent and agrees that it will not do so without the prior written consent of the Collateral Agent, subject to the Grantor's rights under Section 9-509(d)(2) of the Code.

(m) Authorized Terminations

All security interests granted herein shall continue until released in accordance with the Indenture.

(n) Government Contracts

The Grantor agrees that if they are a party to any contract or agreement with any Governmental Authority they will, if requested by the Collateral Agent, take such actions as may be necessary to comply with the Federal Assignment of Claims Act, as amended (31 U.S.C. Section 3727) or any similar state or local law pursuant to which the consideration due the Grantor thereunder is \$3,000,000 or more in the aggregate.

6. THE COLLATERAL AGENT'S APPOINTMENT AS ATTORNEY-IN-FACT

On the Closing Date, the Grantor shall execute and deliver to the



Collateral Agent powers of attorney (collectively, the "POWER OF ATTORNEY") substantially in the forms attached hereto as Exhibit A-1 and A-2, respectively. The powers of attorney granted pursuant to the Power of Attorney are powers coupled with an interest and shall be irrevocable until the payment and performance in full of the Secured Obligations. The powers conferred on the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, under the Power of Attorney are solely to protect the Collateral Agent's interests (for the benefit of the present and future Holders of Secured Obligations) in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent agrees that (a) except for the powers granted in clause (h) of the Power of Attorney, it shall not exercise any power or authority granted under the Power of Attorney unless an Event of Default has occurred and is continuing, (b) the exercise of any power or authority granted under the Power of Attorney shall be subject to Article 10 of the Indenture, and (c) the Collateral Agent shall account for any moneys received by the Collateral Agent in respect of any foreclosure on or disposition of Collateral pursuant to the Power of Attorney provided that neither the Collateral Agent nor any present or future Holder of Secured Obligations shall have any duty as to any Collateral, and the Collateral Agent and the present and future Holders of Secured Obligations shall be accountable only for amounts they actually receive as a result of the exercise of such powers. NONE OF THE COLLATERAL AGENT, THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO GRANTOR FOR ANY ACT OR

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FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES TO THE EXTENT ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

#### 7. REMEDIES; RIGHTS UPON DEFAULT

(a) Subject to Article 10 of the Indenture: (i) in addition to all other rights and remedies granted to it under this Security Agreement, the Indenture, the other Note Documents and under any other instrument or agreement securing, evidencing or relating to any of the Secured Obligations, if any Event of Default shall have occurred and be continuing, the Collateral Agent may exercise all rights and remedies of a secured party under the Code; (ii) without limiting the generality of the foregoing, the Grantor expressly agrees that in any such event the Collateral Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code and other applicable law), may forthwith enter upon the premises of the Grantor where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving the Grantor or any other Person notice and opportunity for a hearing on the Collateral Agent's claim or action and may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, at any exchange at such prices as it may deem acceptable, for cash or on credit or for future delivery without assumption of any credit risk; (iii) the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the present and future Holders of Secured Obligations, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption the Grantor hereby releases; (iv) such sales may be adjourned and continued from time to time with or without notice; (v) the Collateral Agent shall have the right to conduct such sales on the Grantor's premises or elsewhere and shall have the right to use the Grantor's premises without charge for such time or times as the Collateral Agent deems necessary or advisable; (vi) if any Event of Default shall have occurred and be continuing, the Grantor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at a place or places designated by the Collateral Agent which are reasonably convenient to the Collateral Agent and the Grantor, whether at the Grantor's premises or elsewhere; (vii) until

the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent; (viii) the Collateral Agent shall have no obligation to the Grantor to maintain or preserve the rights of the Grantor as against third parties with respect to Collateral while Collateral is in the possession of the Collateral Agent; (ix) the Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the present and future Holders of Secured Obligations), with respect to such appointment

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without prior notice or hearing as to such appointment; (x) the Collateral Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale to the Secured Obligations as provided in the Indenture, and only after so applying such net proceeds, and after the payment by the Collateral Agent for application to amounts secured by the Priority Lien and after payment by the Collateral Agent of any other amount required by any provision of law, need the Collateral Agent account for the surplus, if any, to the Grantor; (xi) to the maximum extent permitted by applicable law, the Grantor waives all claims, damages, and demands against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations arising out of the repossession, retention or sale of the Collateral except to the extent arising out of the gross negligence or willful misconduct of the Trustee, the Collateral Agent or such present or future Holder of Secured Obligations as finally determined by a court of competent jurisdiction; (xii) the Grantor agrees that ten (10) days prior notice by the Collateral Agent of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters; and (xiii) the Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all of the Secured Obligations, including any attorneys' fees or other expenses incurred by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations to collect such deficiency.

- (b) Except as otherwise specifically provided herein, the Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Indenture or any Collateral.
- (c) To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, the Grantor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (i) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as the Grantor, for expressions of interest in acquiring all or any portion of such Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets; (ix) to dispose of assets in wholesale rather than retail markets; (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment; (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or

disposition of Collateral; or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the

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Collateral Agent in the collection or disposition of any of the Collateral. The Grantor acknowledges that the purpose of this Section 7(c) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7(c). Without limitation upon the foregoing, nothing contained in this Section 7(c) shall be construed to grant any rights to the Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7(c).

- (d) Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall be required to make any demand upon, or pursue or exhaust any of their rights or remedies against, the Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof. Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, and all of its and their rights hereunder or under the Indenture or any other Note Document shall be cumulative. To the extent it may lawfully do so, the Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, any valuation, stay, appraisal, extension, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise.

#### 8. GRANT OF LICENSE TO USE INTELLECTUAL PROPERTY

For the purpose of enabling the Collateral Agent to exercise rights and remedies under Section 7 hereof (including, without limiting the terms of Section 7 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby grants to the Collateral Agent, for the benefit of the Collateral Agent for the present and future Holders of Secured Obligations, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by the Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

#### 9. LIMITATION ON THE COLLATERAL AGENT'S DUTY IN RESPECT OF COLLATERAL

The Collateral Agent shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any present or future Holder of Secured Obligations shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such present or future

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Holder of Secured Obligations, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

#### 10. REINSTATEMENT

This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make

an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of the Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

#### 11. NOTICES

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give and serve upon any other party any communication with respect to this Security Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be given in the manner, and deemed received, as provided for under the Indenture.

#### 12. SEVERABILITY

Whenever possible, each provision of this Security Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. This Security Agreement is to be read, construed and applied together with the Indenture and the other Note Documents which, taken together, set forth the complete understanding and agreement of the Trustee, the Collateral Agent, the present and future Holders of Secured Obligations and the Grantor with respect to the matters referred to herein and therein.

#### 13. NO WAIVER; CUMULATIVE REMEDIES

Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Collateral Agent and then only to the extent therein set forth. A waiver by the Collateral Agent of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Collateral Agent would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, any right, power or

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privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. None of the terms or provisions of this Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the Collateral Agent and the Grantor.

#### 14. LIMITATION BY LAW

All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

#### 15. ASSIGNMENT

The Collateral Agent may assign all of its rights and delegate all of its obligations hereunder to any successor Collateral Agent as provided in the Indenture. The Collateral Agent and each Holder of Secured Obligations may assign, indorse or transfer any instrument evidencing all or any part of

the Secured Obligations as provided in, and in accordance with, the Indenture, and the holder of such instrument shall be entitled to the benefits of this Security Agreement.

16. TERMINATION OF THIS SECURITY AGREEMENT

The security interests granted hereby shall continue in full force and effect until released in accordance with the provisions of the Indenture.

17. SUCCESSORS AND ASSIGNS

This Security Agreement and all obligations of the Grantor hereunder shall be binding upon the successors and assigns of the Grantor (including any debtor-in-possession on behalf of the Grantor) and shall, together with the rights and remedies of the Trustee, the Collateral Agent, and the present and future Holders of Secured Obligations, hereunder, inure to the benefit of the Trustee, the Collateral Agent, and the present and future Holders of Secured Obligations, their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Secured Obligations or any portion thereof or interest therein shall in any manner affect the Lien granted to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, hereunder. The Grantor may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Security Agreement.

18. COUNTERPARTS

This Security Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one and the same agreement.

19. GOVERNING LAW

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EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE INDENTURE OR ANY OTHER NOTE DOCUMENT, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW). GRANTOR HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK, SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN GRANTOR, THE TRUSTEE, THE COLLATERAL AGENT OR ANY OF THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS PERTAINING TO THIS SECURITY AGREEMENT, THE INDENTURE OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT THE INDENTURE OR ANY OF THE OTHER NOTE DOCUMENTS, PROVIDED, THAT THE TRUSTEE, THE COLLATERAL AGENT, ANY OF THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS AND GRANTOR ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK, AND, PROVIDED, FURTHER, NOTHING IN THIS SECURITY AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE COLLATERAL AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE SECURED OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF COLLATERAL AGENT. GRANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND GRANTOR HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. GRANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO GRANTOR AT THE ADDRESS SET FORTH IN THE INDENTURE AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILES, PROPER POSTAGE PREPAID.

20. WAIVER OF JURY TRIAL

BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT DISPUTES ARISING HEREUNDER OR RELATING HERETO BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE,

TRUSTEE, THE COLLATERAL AGENT, THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS AND GRANTOR ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED IN CONNECTION WITH, THIS SECURITY AGREEMENT OR ANY OF THE OTHER NOTE DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO.

21. INDEMNIFICATION

The Grantor will pay, reimburse the Trustee, the Collateral Agent and the Holders of Notes for, and to the fullest extent lawful defend and indemnify each of them against, all claims, liabilities, taxes, costs and expenses of every type and nature (including, without limitation, the reasonable fees and charges of attorneys, advisors, auditors and consultants acting for any of them) incurred by any of them as a result of or in connection with the creation, perfection, protection or enforcement of the security interests granted hereby or the exercise or enforcement of any right or remedy under this Security Agreement or to prove, preserve, protect or enforce any such security interest or any claim based upon such security interests in any lawsuit, bankruptcy case or other insolvency or liquidation proceeding.

In accepting, holding and enforcing the security interests, rights and remedies granted hereby or arising hereunder or otherwise acting as Collateral Agent, the Collateral Agent may rely upon and enforce each and all of the provisions of Article 7 of the Indenture conferring any rights, powers, immunities, indemnities or benefits upon the Trustee, including (without limitation) the indemnification provided by Section 7.07(a) of the Indenture, and the Grantor agrees to be bound by each and all of such provisions as fully as if set forth at length herein.

22. SECTION TITLES

The Section titles contained in this Security Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

23. NO STRICT CONSTRUCTION

The parties hereto have participated jointly in the negotiation and drafting of this Security Agreement. In the event an ambiguity or question of intent or interpretation arises, this Security Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Security Agreement.

24. ADVICE OF COUNSEL

Each of the parties represents to each other party hereto that it has discussed this Security Agreement and, specifically, the provisions of Section 19 and Section 20, with its counsel.

25. BENEFIT OF HOLDERS

All Liens granted or contemplated hereby shall be for the benefit of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Indenture.

IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

GNE INVESTMENTS, INC.,  
as the Grantor

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: Secretary

THE BANK OF NEW YORK,

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory

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EXHIBIT A-1

POWER OF ATTORNEY

This Power of Attorney is executed and delivered by GNE Investments, Inc., a Washington corporation (the "Grantor"), to The Bank of New York (hereinafter referred to as "ATTORNEY"), as the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, under an Indenture dated as of June 17, 2002 and a Security Agreement dated as of June 17, 2002, and other related documents (each as further amended, modified or supplemented, as applicable, from time to time, the "NOTE DOCUMENTS"). No person to whom this Power of Attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from the Grantor as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and the Grantor irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this Power of Attorney. The power of attorney granted hereby is coupled with an interest, and may not be revoked or canceled by the Grantor without Attorney's written consent.

The Grantor hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), with full power of substitution, as the Grantor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in the name of the Grantor or in its own name, from time to time in Attorney's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purposes of the Note Documents, and, without limiting the generality of the foregoing, the Grantor hereby grants to Attorney the power and right, on behalf of the Grantor, without notice to or assent by the Grantor, and at any time, to do the following: (a) change the mailing address of the Grantor, open a post office box on behalf of the Grantor, open mail for the Grantor, and ask, demand, collect, give acquittances and receipts for, take possession of, endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in connection with any property of the Grantor; (b) effect any repairs to any asset of the Grantor, or continue to obtain any insurance and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any taxes, liens, security interests, or other encumbrances levied or placed on or threatened against the Grantor or its property; (d) defend any suit, action or proceeding brought against the Grantor if the Grantor does not defend such suit, action or proceeding or if Attorney believes that the Grantor is not pursuing such defense in a manner that will maximize the recovery to Attorney, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Attorney may deem appropriate; (e) file or prosecute any claim, litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Attorney for the purpose of collecting any and all such moneys due to the Grantor whenever payable and to enforce any other right in respect of the Grantor's property; (f) cause the certified public accountants then engaged by the Grantor to prepare and deliver to Attorney at any time and from time to time, promptly upon Attorney's request, the following reports: (1) a reconciliation of all accounts, (2) an aging of all accounts, (3) trial balances, (4) test verifications of such accounts as Attorney may request, and (5) the results of each physical verification of inventory; (g) communicate in its own name with any party to any Contract with regard to the assignment of the right, title and interest of the Grantor in and under the Contracts and other matters relating thereto; (h) to file such financing statements with respect to the Security Agreement, with or without the Grantor's signature, or to file a photocopy of the Security Agreement in substitution for a financing statement, as the Agent may deem appropriate and to execute in

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the Grantor's name such financing statements and amendments thereto and





registrations, recordings, extensions and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose; and

- (iv) To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Secured Party may in its sole but reasonable discretion determine.

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This power of attorney is made pursuant to a Copyright Security Agreement, a Patent Security Agreement and a Trademark Security Agreement, each of which is dated the date hereof, as amended from time to time, by the Grantor in favor of Secured Party and will take effect solely for the purposes of Section 7 of the Security Agreement and is subject to the conditions thereof and may not be revoked until the payment or performance in full of all "Note Obligations" as defined in the Indenture.

Dated as of June 17, 2002.

GNE INVESTMENTS, INC.

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: Secretary

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GNE INVESTMENTS, INC. PLEDGE AGREEMENT  
(IN FAVOR OF THE COLLATERAL AGENT)

THIS PLEDGE AGREEMENT, dated as of June 17, 2002 (this "AGREEMENT") between GNE Investments, Inc., a Washington corporation (the "PLEDGOR") and The Bank of New York in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among H&E Equipment Services L.L.C., a Louisiana limited liability company ("H&E"), H&E Finance Corp., a Delaware corporation (together with H&E, each individually an "ISSUER" and collectively the "ISSUERS"), the Pledgor, as a guarantor, the other guarantors named therein and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain GNE Investments, Inc. Pledge Agreement dated as of the date hereof by the Pledgor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT") (such document, as amended, modified or supplemented from time to time, the "PRIORITY PLEDGE AGREEMENT"), the Pledgor has pledged to the Credit Agreement Agent, and granted the Credit Agreement Agent a security interest in, the Pledged Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "CREDIT AGREEMENT") among H&E, Great Northern Equipment, Inc., a Montana corporation (together with the Pledgor, each individually, a "BORROWER", and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the Pledgor, as a credit party, together with the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Pledgor, pursuant to the terms of the Indenture, has agreed to pledge to the Collateral Agent, and grant the Collateral Agent a security interest in, the Pledged Collateral (as defined below) in accordance with this Agreement; and
- (D) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Agreement as security for the Secured Obligations (as defined below) upon any and all of the Pledged Collateral (as defined below) are subordinate in ranking to all present and future Priority Liens upon any and all of the Pledged Collateral; and (ii) the Note Liens upon any and all Pledged Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Pledgor hereby agrees with the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations (as defined below) as follows:

1. DEFINITIONS

Unless otherwise defined herein, terms defined in the Indenture are used herein as therein defined, and the following shall have (unless otherwise provided elsewhere in this Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"BANKRUPTCY CODE" means title 11, United States Code, as amended from time to time, and any successor statute thereto;

"GOVERNMENTAL AUTHORITY" means any nation or government, any state or other

political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government;

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"PLEDGED COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"PLEDGED ENTITY" means the issuer of Pledged Shares or Pledged Indebtedness;

"PLEDGED INDEBTEDNESS" means the Indebtedness evidenced by promissory notes and instruments listed on Part B of Schedule I hereto;

"PLEDGED SHARES" means those shares of Stock listed on Part A of Schedule I hereto;

"SPECIFIED PRIORITY LIEN" means the Lien on the Pledged Collateral granted by the Pledgor to the Credit Agreement Agent for the benefit of the Lenders under the Priority Pledge Agreement which Lien has priority to the Lien hereof to the extent and on the terms set forth in Article 10 of the Indenture; and

"SECURED OBLIGATIONS" means all liability of the Pledgor, whenever incurred or arising, under, for or in respect of the Notes, the Subsidiary Guarantees and any and all other present and future Note Obligations.

"STOCK" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission (the "COMMISSION") under the Securities Exchange Act of 1934).

## 2. PLEDGE

The Pledgor hereby pledges to the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations, and grants to the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations, a security interest in all of the following (collectively, the "PLEDGED COLLATERAL"):

- (a) (i) the Pledged Shares and the certificates representing the Pledged Shares, (ii) all options, warrants, shares and/or other securities, shares of stock, certificates, instruments or other documents representing the Pledged Shares and (iii) all dividends, distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Shares;
- (b) any additional shares of stock of the Pledged Entity from time to time acquired by the Pledgor in any manner (which shares shall be deemed to be part of the Pledged Shares), and the certificates representing such additional shares, and all dividends, distributions, bonus issues, offers by way of rights allotments, cash, instruments, compensation, assets and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Stock;
- (c) the Pledged Indebtedness and the promissory notes or instruments evidencing the Pledged Indebtedness, and all interest, cash, instruments and other property and assets from time to time received, receivable or otherwise distributed in respect of the Pledged Indebtedness;
- (d) all additional Indebtedness arising after the date hereof and owing to the Pledgor and evidenced by promissory notes or other instruments, together with such promissory notes and instruments, and all interest, cash, instruments and other property and assets from time to time received, receivable or otherwise distributed in respect of that Pledged Indebtedness; and
- (e) all proceeds of every kind, including proceeds of proceeds, of any and all of the foregoing (including, without limitation, proceeds which

constitute property of the type described above) and to the extent not otherwise included, all money and cash.

### 3. SECURITY FOR OBLIGATIONS

This Agreement secures, and the Pledged Collateral is security for, the prompt payment in full when due, whether at stated maturity, by acceleration or otherwise, and performance of all of the Secured Obligations.

### 4. DELIVERY OF PLEDGED COLLATERAL

Upon, and concurrently with, the Discharge of Priority Lien Indebtedness, without notice or demand: (i) the Pledgor shall deliver, or shall cause Credit Agreement Agent to deliver, all certificates and all promissory notes and instruments evidencing the Pledged Collateral owned by the Pledgor and all other warrants, shares and/or other securities, original shares of stock, certificates, instruments or other documents, in each case evidencing or representing title to other Pledged Collateral to the Collateral Agent; and (ii) all such Pledged Shares shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Collateral Agent and all promissory notes or other instruments evidencing any such Pledged Indebtedness shall be endorsed by the Pledgor, and, if necessary, the Credit Agreement Agent (which may endorse without recourse or warranty); PROVIDED, that if the Pledged Entity's constitutive documents contain a restriction on the right to transfer its shares then, in order to better perfect the Collateral Agent's security in any such Pledged Shares of such Pledged Entity, the certificates evidencing those Pledged Shares shall be registered in the Collateral Agent's name or, at the Collateral Agent's option, the Collateral Agent's nominee's name, and shall be accompanied by a copy of the share register of such Pledged Entity showing the Collateral Agent's name or, at the Collateral Agent's option, the Collateral Agent's nominee's name, as the registered owner of those Pledged Shares of such Pledged Entity, certified by the corporate secretary of such Pledged Entity as being true and complete.

### 5. REPRESENTATIONS AND WARRANTIES

The Pledgor represents and warrants to the Collateral Agent that:

- (a) The Pledgor is, and at the time of delivery of the Pledged Shares to Credit Agreement Agent will be, the sole holder of record (unless at the time of delivery of such Pledged Shares to Credit Agreement Agent, such Pledged Shares are registered in Credit Agreement Agent's or, at Credit Agreement Agent's option, Credit Agreement Agent's nominee's name, in which case the Pledgor was the sole holder of record of such Pledged Shares immediately prior to registration in Credit Agreement Agent's or Credit Agreement Agent's nominee's name, as applicable) and the sole beneficial owner of such Pledged Collateral pledged by the Pledgor free and clear of any Lien thereon or affecting the title thereto, except for any Lien created by this Agreement and any Permitted Lien (including any Specified Priority Lien); the Pledgor is and at the time of delivery of the instruments or certificates evidencing the Pledged Indebtedness to Credit Agreement Agent will be, the sole beneficial owner of such Pledged Collateral free and clear of any Lien thereon or affecting title thereto, except for any Lien created by this Agreement and any Permitted Lien;
- (b) all of the Pledged Shares have been duly authorized, validly issued and are fully paid and non-assessable; the Pledged Indebtedness has been duly authorized, authenticated or issued and delivered by, and is the legal, valid and binding obligations of, the Pledged Entity, and the Pledged Entity is not in default thereunder;
- (c) the Pledgor has the right and requisite authority to pledge, assign, transfer, deliver, deposit and set over the Pledged Collateral pledged by the Pledgor to the Credit Agreement Agent and the Collateral Agent as provided herein;
- (d) none of the Pledged Shares or Pledged Indebtedness has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject;
- (e) all of the Pledged Shares are presently owned by the Pledgor, and are presently represented by the certificates listed on Part A of Schedule I hereto and the Pledged Collateral constitutes, and so long as this Agreement remains in effect will continue to constitute, 100%

of the equity interests (whether options, warrants or stock or otherwise) held by the Pledgor in the Pledged Entity. As of the date hereof, there are no existing options, warrants, calls or commitments of any character whatsoever relating to the Pledged Shares;

- (f) no consent, approval, authorization or other order or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required (i) for the pledge by the Pledgor of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by the Pledgor, or (ii) for the exercise by Credit Agreement Agent or by the Collateral Agent of the voting or other rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally and except as may be generally applicable to Credit Agreement Agent or the Collateral Agent;
- (g) the pledge, assignment and delivery of the Pledged Collateral pursuant to this Agreement will create a valid second priority Lien on and a second priority perfected security interest in favor of the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations in the Pledged Collateral and the proceeds thereof, securing the payment of the Secured Obligations, subject to no other Lien (other than the Specified Priority Lien);
- (h) as at the date hereof, the Pledged Shares constitute 100% of the issued and outstanding shares of common Stock of the Pledged Entity; and
- (i) except as disclosed on Part B of Schedule I, none of the Pledged Indebtedness is subordinated in right of payment to other Indebtedness (except for the Priority Lien and the Secured Obligations) or subject to the terms of an indenture.

The representations and warranties set forth in this Section 5 shall survive the execution and delivery of this Agreement.

## 6. COVENANTS

The Pledgor covenants and agrees that until the payment and performance in full of the Secured Obligations:

- (a) The Pledgor will not sell, assign, transfer, pledge, or otherwise encumber any of its rights in or to the Pledged Collateral, or any unpaid dividends, interest or other distributions or payments with respect to the Pledged Collateral or grant a Lien in the Pledged Collateral, unless otherwise expressly permitted by the Indenture;
- (b) The Pledgor will, at its expense, promptly execute, acknowledge and deliver all such instruments and take all such actions as the Collateral Agent from time to time may reasonably request in order to ensure to the Trustee, the Collateral Agent and all the present and future Holders of Secured Obligations the benefits of the Liens in and to the Pledged Collateral intended to be created by this Agreement, including the filing of any necessary Uniform Commercial Code financing statements, which may be filed by the Collateral Agent with or (to the extent permitted by law) without the signature of the Pledgor, and will cooperate with the Collateral Agent, at the Pledgor's expense, in obtaining all necessary approvals and making all necessary filings under federal, state, local or foreign law in connection with such Liens or any sale or transfer of the Pledged Collateral;
- (c) The Pledgor has and will defend the title to the Pledged Collateral and the Liens of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations in the Pledged Collateral against the claim of any Person other than the holders of Specified Priority Liens and will maintain and preserve Liens of the Collateral Agent; and
- (d) Upon, and concurrently with, the Discharge of Priority Lien Indebtedness, without notice or demand the Pledgor will, upon obtaining ownership of any additional Stock or promissory notes or instruments of the Pledged Entity or Stock or promissory notes or instruments otherwise required to be pledged pursuant to any of the Note Documents or the Priority Pledge Agreement, which Stock, notes or instruments are not already Pledged Collateral, promptly (and in any event within three (3) Business Days) deliver to the Collateral Agent

a Pledge Amendment, duly executed by the Pledgor, in substantially the

form of Schedule II hereto (a "PLEDGE AMENDMENT") in respect of any such additional Stock, notes or instruments, pursuant to which the Pledgor shall pledge to the Collateral Agent all of such additional Stock, notes and instruments; PROVIDED, HOWEVER, that (i) in no event shall the Pledgor be required to pledge to the Collateral Agent shares of Stock of an entity organized under the laws of a jurisdiction outside the United States which represent more than 65% of the voting power of all classes of issued and outstanding shares of such entity which are entitled to vote; and (ii) prior to the Discharge of Priority Lien Indebtedness, such additional Stock, notes or instruments need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent. The Pledgor hereby authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement and agrees that all Pledged Shares and Pledged Indebtedness listed on any Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder be considered Pledged Collateral.

#### 7. THE PLEDGOR'S RIGHTS

As long as no Event of Default shall have occurred and be continuing and until written notice shall be given to the Pledgor in accordance with Section 8(a) hereof:

- (a) The Pledgor shall have the right, from time to time, to vote and give consents with respect to the Pledged Collateral, or any part thereof for all purposes not inconsistent with the provisions of this Agreement and the other Note Documents; PROVIDED, HOWEVER, that no vote shall be cast, and no consent shall be given or action taken, which would have the effect of impairing the position or interest of the Collateral Agent in respect of the Pledged Collateral or which would authorize, effect or consent to (unless and to the extent expressly permitted by the Indenture), or to the extent that the consummation of the transaction is conditional upon the payment in full in cash of the Note Obligations:
- (i) the dissolution or liquidation, in whole or in part, of the Pledged Entity;
  - (ii) the consolidation or merger of the Pledged Entity with any other Person;
  - (iii) the sale, disposition or encumbrance of all or substantially all of the assets of the Pledged Entity, except for Liens in favor of the Credit Agreement Agent pursuant to the Priority Pledge Agreement or the Collateral Agent pursuant to the terms hereof;
  - (iv) any change in the authorized number of shares, the stated capital or the authorized share capital of the Pledged Entity or the issuance of any additional shares of its Stock; or
  - (v) the alteration of the voting rights with respect to the Stock of the Pledged Entity; and
- (b) (i) The Pledgor shall be entitled, from time to time, to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Shares and Pledged Indebtedness to the extent not in violation of the Indenture other than any and all: (A) dividends and interest paid or payable other than in cash in respect of any Pledged Collateral, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Pledged Collateral; (B) dividends and other distributions paid or payable in cash in respect of any Pledged Shares in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in capital of the Pledged Entity; and (C) cash paid, payable or otherwise distributed, in respect of principal of, or in redemption of, or in exchange for, any Pledged Collateral; PROVIDED, HOWEVER, that until actually paid all rights to such distributions shall remain subject to the Lien created by this Agreement; and

(ii) all dividends and interest (other than such cash dividends and interest as are permitted to be paid to the Pledgor in accordance with clause (i) above) and all other distributions in respect of any of the Pledged Shares or Pledged Indebtedness, whenever paid or made, shall be delivered to Collateral Agent to hold as Pledged Collateral and shall, if received by the Pledgor, be received in trust for the benefit of Collateral Agent, be segregated from the other property or funds of the Pledgor, and be forthwith delivered to Collateral Agent as Pledged Collateral in the same form as so received (with any necessary indorsement); PROVIDED that until the Discharge of Priority Lien Indebtedness, such dividends, interest and distributions need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent and may also be held in trust for the Credit Agreement Agent and need not be delivered to the Collateral Agent so long as they are held in trust for the Collateral Agreement Agent.

#### 8. DEFAULTS AND REMEDIES; PROXY

(a) Subject to Article 10 of the Indenture: (i) upon the occurrence of an Event of Default and during the continuation of such Event of Default, and concurrently with written notice to the Pledgor, the Collateral Agent (personally or through an agent) is hereby authorized and empowered to transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, to exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon, to sell in one or more sales after ten (10) days' notice of the time and place of any public sale or of the time at which a private sale is to take place (which notice the Pledgor agrees is commercially reasonable) the whole or any part of the Pledged Collateral and to otherwise act with respect to the Pledged Collateral as though the Collateral Agent was the outright owner thereof; (ii) any sale shall be made at a public or private sale at the Collateral Agent's place of business, or at any place to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as the Collateral Agent may deem fair, and the Collateral Agent may be the purchaser of the whole or any part of the Pledged Collateral so sold and hold the same thereafter in its own right free from any claim of the Pledgor or any right of redemption; (iii) each sale shall be made to the highest bidder, but the Collateral Agent reserves the right to reject any and all bids at such sale which, in its discretion, it shall deem inadequate; (iv) demands of performance, except as otherwise herein specifically provided for, notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of the Collateral Agent; (v) THE PLEDGOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE COLLATERAL AGENT AS THE PROXY AND ATTORNEY-IN-FACT OF THE PLEDGOR WITH RESPECT TO THE PLEDGED COLLATERAL FOR THE PURPOSE OF CARRYING OUT THE TERMS OF THIS AGREEMENT, INCLUDING THE RIGHT TO VOTE THE PLEDGED SHARES, WITH FULL POWER OF SUBSTITUTION TO DO SO; (vi) THE APPOINTMENT OF THE

COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE TERMINATION DATE; (vii) IN ADDITION TO THE RIGHT TO VOTE THE PLEDGED SHARES, THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF THE PLEDGED SHARES WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS); (viii) SUCH PROXY AND POWER OF ATTORNEY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY PLEDGED SHARES ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE PLEDGED SHARES OR ANY OFFICER OR AGENT THEREOF), UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT (AS DEFINED IN THE INDENTURE); AND (ix) NOTWITHSTANDING THE FOREGOING, THE COLLATERAL AGENT SHALL NOT HAVE ANY DUTY TO EXERCISE ANY SUCH RIGHT OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO.

(b) Subject to Article 10 of the Indenture: if, at the original time or times appointed for the sale of the whole or any part of the Pledged Collateral, the highest bid, if there be but one sale, shall be

inadequate to discharge in full all the Priority Lien Obligations and the Secured Obligations, or if the Pledged Collateral be offered for sale in lots, if at any of such sales, the highest bid for the lot offered for sale would indicate to the Collateral Agent, in its discretion, that the proceeds of the sales of the whole of the Pledged Collateral would be unlikely to be sufficient to discharge all the Priority Lien Obligations and the Secured Obligations, the Collateral Agent may, on one or more occasions and in its discretion, postpone any of said sales by public announcement at the time of sale or the time of previous postponement of sale, and no other notice of such postponement or postponements of sale need be given, any other notice being hereby waived; PROVIDED, HOWEVER, that any sale or sales made after such postponement shall be after ten (10) days' notice to the Pledgor.

- (c) Subject to Article 10 of the Indenture: if, at any time when the Collateral Agent in its sole discretion reasonably determines, following the occurrence and during the continuance of an Event of Default, that, in connection with any actual or contemplated exercise of its rights (when permitted under this Section 8) to sell the whole or any part of the Pledged Shares hereunder, it is necessary or advisable to effect a public registration of all or part of the Pledged Collateral pursuant to the Securities Act of 1933, as amended (or any similar statute then in effect) (the "ACT"), the Pledgor shall, in an expeditious manner, cause the Pledged Entity to:
- (i) prepare and file with the Commission a registration statement with respect to the Pledged Shares and in good faith use commercially reasonable efforts to cause such registration statement to become and remain effective;
  - (ii) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Act with respect to the sale or other disposition of the Pledged Shares covered by such registration statement whenever the Collateral Agent shall desire to sell or otherwise dispose of the Pledged Shares;
  - (iii) furnish to the Collateral Agent such numbers of copies of a prospectus and a preliminary prospectus, in conformity with the requirements of the Act, and such other documents as the Collateral Agent may request in order to facilitate the public sale or other disposition of the Pledged Shares by the Collateral Agent;
  - (iv) use commercially reasonable efforts to register or qualify the Pledged Shares covered by such registration statement under such other securities or blue sky laws of such jurisdictions within the United States and Puerto Rico as the Collateral Agent shall request, and do such other reasonable acts and things as may be required of it to enable the Collateral Agent to consummate the public sale or other disposition in such jurisdictions of the Pledged Shares by the Collateral Agent;
  - (v) use its best efforts to furnish, at the request of the Collateral Agent, on the date that shares of the Pledged Collateral are delivered to the underwriters for sale pursuant to such registration or, if the security is not being sold through underwriters, on the date that the registration statement with respect to such Pledged Shares becomes effective, (A) an opinion, dated such date, of the independent counsel representing such registrant for the purposes of such registration, addressed to the underwriters, if any, and in the event the Pledged Shares are not being sold through underwriters, then to the Collateral Agent, in customary form and covering matters of the type customarily covered in such legal opinions; and (B) a comfort letter, dated such date, from the independent certified public accountants of such registrant, addressed to the underwriters, if any, and in the event the Pledged Shares are not being sold through underwriters, then to the Collateral Agent, in a customary form and covering matters of the type customarily covered by such comfort letters and as the underwriters or the Collateral Agent shall reasonably request. The opinion of counsel referred to above shall additionally cover such other legal matters with respect to the registration in respect of which such opinion is



being given as the Collateral Agent may reasonably request. The letter referred to above from the independent certified public accountants shall additionally cover such other financial matters (including information as to the period ending not more than five (5) Business Days prior to the date of such letter) with respect to the registration in respect of which such letter is being given as the Collateral Agent may reasonably request; and

- (vi) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable but not later than 18 months after the effective date of the registration statement, an earnings statement covering the period of at least 12 months beginning with the first full month after the effective date of such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Act.
- (d) All expenses incurred in complying with Section 8(c) hereof, including, without limitation, all registration and filing fees (including all reasonable expenses incident to

filing with the National Association of Securities Dealers, Inc.), printing expenses, reasonable fees and disbursements of counsel for the registrant, the reasonable fees and expenses of counsel for the Collateral Agent, expenses of the independent certified public accountants (including any special audits incident to or required by any such registration) and expenses of complying with the securities or blue sky laws or any jurisdictions, shall be paid by the Pledgor.

- (e) If, at any time when the Collateral Agent shall determine to exercise its right to sell the whole or any part of the Pledged Collateral hereunder, such Pledged Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Act, the Collateral Agent may, in its discretion (subject only to applicable requirements of law), sell such Pledged Collateral or part thereof by private sale in such manner and under such circumstances as the Collateral Agent may deem necessary or advisable, but subject to the other requirements of this Section 8, and shall not be required to effect such registration or to cause the same to be effected. Without limiting the generality of the foregoing, in any such event, the Collateral Agent in its discretion (x) may, in accordance with applicable securities laws, proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Pledged Collateral or part thereof could be or shall have been filed under said Act (or similar statute), (y) may approach and negotiate with a single possible purchaser to effect such sale, and (z) may restrict such sale to a purchaser who is an accredited investor under the Act and who will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such Pledged Collateral or any part thereof. In addition to a private sale as provided above in this Section 8, if any of the Pledged Collateral shall not be freely distributable to the public without registration under the Act (or similar statute) at the time of any proposed sale pursuant to this Section 8, then the Collateral Agent shall not be required to effect such registration or cause the same to be effected but, in its discretion (subject only to applicable requirements of law), may require that any sale hereunder (including a sale at auction) be conducted subject to restrictions:
  - (i) as to the financial sophistication and ability of any Person permitted to bid or purchase at any such sale;
  - (ii) as to the content of legends to be placed upon any certificates representing the Pledged Collateral sold in such sale, including restrictions on future transfer thereof;
  - (iii) as to the representations required to be made by each Person bidding or purchasing at such sale relating to that Person's access to financial information about the Pledgor and such Person's intentions as to the holding of the Pledged Collateral so sold for investment for its own account and not with a view to the distribution thereof; and
  - (iv) as to such other matters as the Collateral Agent may, in its discretion, deem necessary or appropriate in order that such sale (notwithstanding any failure so to register) may be

effected in compliance with the Bankruptcy Code and other laws affecting the enforcement of creditors' rights and the Act and all applicable state securities laws.

- (f) The Pledgor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with clause (e) above. The Pledgor also acknowledges that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the Pledged Entity to register such securities for public sale under the Act, or under applicable state securities laws, even if the Pledgor and the Pledged Entity would agree to do so.
- (g) The Pledgor agrees to the maximum extent permitted by applicable law that following the occurrence and during the continuance of an Event of Default it will not at any time plead, claim or take the benefit of any appraisal, valuation, stay, extension, moratorium or redemption law now or hereafter in force in order to prevent or delay the enforcement of this Agreement, or the absolute sale of the whole or any part of the Pledged Collateral or the possession thereof by any purchaser at any sale hereunder, and the Pledgor waives the benefit of all such laws to the extent it lawfully may do so. The Pledgor agrees that it will not interfere with any right, power and remedy of each of the Collateral Agent provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies. No failure or delay on the part of the Collateral Agent to exercise any such right, power or remedy and no notice or demand which may be given to or made upon the Pledgor by the Collateral Agent with respect to any such remedies shall operate as a waiver thereof, or limit or impair the Collateral Agent's right to take any action or to exercise any power or remedy hereunder, without notice or demand, or prejudice its rights as against the Pledgor in any respect.
- (h) The Pledgor further agrees that a breach of any of the covenants contained in this Section 8 will cause irreparable injury to the Collateral Agent and the present and future Holders of Secured Obligations, that the Collateral Agent and the present and future Holders of Secured Obligations shall have no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 8 shall be specifically enforceable against the Pledgor, and the Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that the Secured Obligations are not then due and payable in accordance with the agreements and instruments governing and evidencing such obligations.

#### 9. WAIVER

No delay on the Collateral Agent's part in exercising any power of sale, Lien, option or other right hereunder, and no notice or demand which may be given to or made upon the Pledgor by the Collateral Agent with respect to any power of sale, Lien, option or other right hereunder, shall constitute a waiver thereof, or limit or impair the Collateral Agent's right to take any action or to exercise any power of sale, Lien, option, or any other right hereunder, without notice or demand, or prejudice the Collateral Agent's rights as against the Pledgor in any respect.

#### 10. ASSIGNMENT

The Collateral Agent may assign all of its rights and delegate all of its obligations hereunder to any successor Collateral Agent as provided in the Indenture. The Collateral Agent and each Holder of Secured Obligations may assign, indorse or transfer any instrument evidencing all or any part of the Secured Obligations as provided in, and in accordance with, the Indenture, and the holder of such instrument shall be entitled to the benefits of this Agreement.

#### 11. TERMINATION

The security interests granted hereby shall continue in full force and effect until released in accordance with the provisions of the Indenture.

12. LIEN ABSOLUTE

All rights of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations hereunder, and all obligations of the Pledgor hereunder, shall be absolute and unconditional irrespective of:

- (a) any lack of validity or enforceability of the Indenture, any other Note Document or any other agreement or instrument governing or evidencing any of the Secured Obligations;
- (b) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture, any other Note Document or any other agreement or instrument governing or evidencing any of the Secured Obligations;
- (c) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Secured Obligations;
- (d) the insolvency of any Obligor; or
- (e) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Pledgor.

13. RELEASE

The Pledgor consents and agrees that each of the Trustee, the Collateral Agent and all the present and future Holders of Secured Obligations may at any time, or from time to time, in its discretion do any of the following without changing the Pledgor's obligations hereunder or affecting the validity, perfection or priority of the Lien granted hereunder:

- (a) renew, extend or change the time of payment, and/or the manner, place or terms of payment of all or any part of the Secured Obligations; and
- (b) exchange, release and/or surrender all or any of the Collateral (including the Pledged Collateral), or any part thereof, by whomsoever deposited, which is now or may hereafter be held by the Collateral Agent in connection with all or any of the Secured Obligations; all in such manner and upon such terms as the Collateral Agent may deem proper, and without notice to or further assent from the Pledgor, it being hereby agreed that the Pledgor shall be and remain bound upon this Agreement, irrespective of the value or condition of any of the Collateral, and notwithstanding any such change, exchange,

settlement, compromise, surrender, release, renewal or extension, and notwithstanding also that the Secured Obligations may, at any time, exceed the aggregate principal amount thereof set forth in the Indenture, or any other agreement governing any of the Secured Obligations. The Pledgor hereby waives notice of acceptance of this Agreement, and also presentment, demand, protest and notice of dishonor of any and all of the Secured Obligations, and promptness in commencing suit against any party hereto or liable hereon, and in giving any notice to or of making any claim or demand hereunder upon the Pledgor. No act or omission of any kind on the Collateral Agent's part shall in any event affect or impair this Agreement.

14. REINSTATEMENT

This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Pledgor or the Pledged Entity for liquidation or reorganization, should the Pledgor or the Pledged Entity become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Pledgor's or the Pledged Entity's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

15. MISCELLANEOUS

- (a) The Collateral Agent may execute any of its duties hereunder by or through agents or employees and shall be entitled to advice of counsel of its selection concerning all matters pertaining to its duties hereunder.
- (b) The Pledgor agrees to promptly reimburse the Collateral Agent for actual out-of-pocket expenses, including, without limitation, reasonable counsel fees and expenses, incurred by the Collateral Agent in connection with the administration and enforcement of this Agreement.
- (c) The Pledgor will pay, reimburse the Trustee, the Collateral Agent and the Holders of Notes for, and to the fullest extent lawful defend and indemnify each of them against, all claims, liabilities, taxes, costs and expenses of every type and nature (including, without limitation, the reasonable fees and charges of attorneys, advisors, auditors and consultants acting for any of them) incurred by any of them as a result of or in connection with the creation, perfection, protection or enforcement of the security interests granted hereby or the exercise or enforcement of any right or remedy under this Agreement or to prove, preserve, protect or enforce any such security interest or any claim based upon such security interests in any lawsuit, bankruptcy case or other insolvency or liquidation proceeding. In accepting, holding and enforcing the security interests, rights and remedies granted hereby or arising hereunder or otherwise acting as Collateral Agent, the Collateral Agent may rely upon and enforce each and all of the provisions of Article 7 of the Indenture conferring any rights, powers, immunities, indemnities or benefits upon the Trustee, including (without limitation) the indemnification provided by Section 7.07(a) of

the Indenture, and the Pledgor agrees to be bound by each and all of such provisions as fully as if set forth at length herein.

- (d) Neither the Collateral Agent, nor any of its respective officers, directors, employees, agents or counsel shall be liable for any action lawfully taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.
- (e) THIS AGREEMENT SHALL BE BINDING UPON THE PLEDGOR AND ITS SUCCESSORS AND ASSIGNS (INCLUDING A DEBTOR-IN-POSSESSION ON BEHALF OF THE PLEDGOR), AND SHALL INURE TO THE BENEFIT OF, AND BE ENFORCEABLE BY, THE TRUSTEE, THE COLLATERAL AGENT AND THE PRESENT AND FUTURE HOLDERS OF SECURED OBLIGATIONS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW), AND NONE OF THE TERMS OR PROVISIONS OF THIS AGREEMENT MAY BE WAIVED, ALTERED, MODIFIED OR AMENDED EXCEPT IN WRITING DULY SIGNED FOR AND ON BEHALF OF THE COLLATERAL AGENT AND THE PLEDGOR.

16. SEVERABILITY

If for any reason any provision or provisions hereof are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or effect those portions of this Agreement which are valid.

17. NOTICES

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give or serve upon any other a communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and either shall be delivered in person or sent by registered or certified mail, return receipt requested, with proper postage prepaid, or by facsimile transmission and confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided herein:

- (a) If to the Trustee or the Collateral Agent, at:

The Bank of New York  
101 Barclay Street, Floor 8 West  
New York, New York 10286  
Telecopier Number: (212) 896-7299  
Attention: Corporate Trust Administration

(b) If to the Pledgor, at:

c/o H&E Equipment Services L.L.C.

H&E Finance Corp.  
11100 Mead Road  
Second Floor  
Baton Rouge, LA 70816  
Attention: John M. Enguist  
Telephone No.: (225) 298-5200  
Telecopier No.: (225) 298-5236  
With a copy to:

Kirkland & Ellis  
Citicorp Center  
153 East 53rd Street  
New York, New York 10022  
Telecopier No.: (212) 446-4900  
Attention: Joshua Korff

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly served, given or delivered (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by telecopy or other similar facsimile transmission (with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided in this Section 17), (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid, or (d) when delivered, if hand-delivered by messenger. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designated above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

#### 18. SECTION TITLES

The Section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

#### 19. COUNTERPARTS

This Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement.

#### 20. BENEFIT OF HOLDERS

All security interests granted or contemplated hereby shall be for the benefit of the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations, and all proceeds or payments realized from the Pledged Collateral in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

GNE INVESTMENTS, INC.,  
as the Pledgor

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: Secretary

THE BANK OF NEW YORK,  
as the Trustee and the Collateral Agent

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory

GREAT NORTHERN EQUIPMENT, INC. SECURITY AGREEMENT  
(IN FAVOR OF THE COLLATERAL AGENT)

THIS SECURITY AGREEMENT, dated as of June 17, 2002 (this "SECURITY AGREEMENT") is entered into by and between GREAT NORTHERN EQUIPMENT, INC., a Montana corporation (the "GRANTOR") and The Bank of New York in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture and Security Agreement referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among H&E Equipment Services L.L.C., a Louisiana limited liability company ("H&E"), H&E Finance Corp., a Delaware corporation (together with H&E, each individually an "ISSUER" and collectively the "ISSUERS"), the Grantor, as a guarantor, the other guarantors named therein and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain GREAT NORTHERN EQUIPMENT, INC. Patent Security Agreement dated as of the date hereof by the Grantor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT"), the Grantor has granted to the Credit Agreement Agent a first-priority lien and security interest in the Patent Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "CREDIT AGREEMENT") among Grantor, H&E (together with Grantor each individually, a "BORROWER", and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor, pursuant to the terms of the Indenture, has agreed to grant the Collateral Agent a continuing Lien on the Collateral (as defined below) and a security interest in the Collateral in accordance with this Security Agreement; and
- (D) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Security Agreement as security for the Secured Obligations upon any and all of the Collateral are subordinate in ranking to all present and future Priority Liens upon any and all of the Collateral; and (ii) the Note Liens upon any and all Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor hereby agrees with the Trustee as the Collateral Agent for the benefit of all the present and future Holders of Secured Obligations (as defined below) as follows:

1. DEFINED TERMS

(a) Unless otherwise defined herein, terms defined in the Indenture and used herein have the meanings given to them in the Indenture. All other undefined terms contained in this Security Agreement, unless the context indicates otherwise, have the meanings provided for by Article 9 of the New York Uniform Commercial Code (the "CODE") to the extent the same are used or defined therein.

(b) The following shall have (unless otherwise provided elsewhere in this Security Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"ACCOUNT DEBTOR" means any Person who may become obligated to an Obligor under, with respect to, or on account of, an Account,

Chattel Paper or General Intangibles (including a payment intangible);

"ACCOUNTS" means all "accounts," as such term is defined in the Code, now owned or hereafter acquired by any Obligor including (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper, or Instruments), (including any such obligations that may be characterized as an account or contract right under the Code), (b) all of each Obligor's rights in, to and under all purchase orders or receipts for goods or services, (c) all of each Obligor's rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to any Obligor for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Obligor or in connection with any other transaction (whether or not yet earned by performance on the part of such Obligor), (e) all health care insurance receivables and (f) all collateral security of any kind, given by any Account Debtor or any other Person with respect to any of the foregoing;

"CHATTEL PAPER" means any "chattel paper," as such term is defined in the Code, including electronic chattel paper, now owned or hereafter acquired by any Obligor;

"COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"CONTRACTS" means all "contracts," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, in any event, including all contracts, undertakings, or agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which any Obligor may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account;

"COPYRIGHT LICENSE" means any and all rights now owned or hereafter acquired by any Obligor under any written agreement granting any right to use any Copyright or Copyright registration;

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"COPYRIGHT SECURITY AGREEMENTS" means the Copyright Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"COPYRIGHTS" means all of the following now owned or hereafter acquired by any Obligor: (a) all copyrights and General Intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof;

"DEPOSIT ACCOUNTS" means all "deposit accounts" as such term is defined in the Code, now or hereafter held in the name of any Obligor;

"DOCUMENTS" means all "documents," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located;

"EQUIPMENT INVENTORY" means Inventory of any Borrower consisting of equipment held for sale or lease to third parties and equipment while on lease to third parties;

"FIXTURES" means all "fixtures" as such term is defined in the



Code, now owned or hereafter acquired by any Obligor;

"GENERAL INTANGIBLES" means all "general intangibles," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, including all right, title and interest that such Obligor may now or hereafter have in or under any Contract, all payment intangibles, customer lists, Licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark License), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including without limitation all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Obligor or any computer bureau or service company from time to time acting for such Obligor;

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"GOODS" means all "goods" as defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, including embedded software to the extent included in "goods" as defined in the Code, manufactured homes, standing timber that is cut and removed for sale and unborn young of animals;

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"INSTRUMENTS" means any "instrument," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper;

"INTELLECTUAL PROPERTY" means any and all Licenses, Patents, Copyrights, Trademarks, and the goodwill associated with such Trademarks;

"INVENTORY" means all "inventory," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Obligor for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind, nature or description used or consumed or to be used or consumed in such Obligor's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software;

"INVESTMENT PROPERTY" means all "investment property" as such term is defined in the Code now owned or hereafter acquired by any Obligor, wherever located, including (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (ii) all securities entitlements of any Obligor, including the rights of any Obligor to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities

intermediary with respect to that account; (iii) all securities accounts of any Obligor; (iv) all commodity contracts of any Obligor; and (v) all commodity accounts of any Obligor;

"LETTER-OF-CREDIT RIGHTS" means "letter-of-credit rights" as such term is defined in the Code, now owned or hereafter acquired by any Obligor, including rights to payment or performance under a letter of credit, whether or not such Obligor, as beneficiary, has demanded or is entitled to demand payment or performance;

"LICENSE" means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by any Obligor;

"PATENT LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right with respect to any invention on which a Patent is in existence;

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"PATENT SECURITY AGREEMENTS" means the Patent Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"PATENTS" means all of the following in which any Obligor now holds or hereafter acquires any interest: (a) all letters patent of the United States or of any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or any other country, and (b) all reissues, continuations, continuations-in-part or extensions thereof;

"P&E" means all "equipment," as such term is defined in the Code, now owned or hereafter acquired by any Obligor, wherever located and, in any event, including all such Obligor's machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto. P&E excludes Equipment Inventory and Fixtures;

"PROCEEDS" means "proceeds," as such term is defined in the Code, including (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Obligor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to any Obligor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting under color of governmental authority), (c) any claim of any Obligor against third parties (i) for past, present or future infringement of any Patent or Patent License, or (ii) for past, present or future infringement or dilution of any Copyright, Copyright License, Trademark or Trademark License, or for injury to the goodwill associated with any Trademark or Trademark License, (d) any recoveries by any Obligor against third parties with respect to any litigation or dispute concerning any of the Collateral, including claims arising out of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral, (e) all amounts collected on, or distributed on account of, other Collateral, including dividends, interest, distributions and Instruments with respect to Investment Property and pledged Stock, and (f) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition of Collateral and all rights

arising out of Collateral;

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"SECURED OBLIGATIONS" means all liability of the Grantor, whenever incurred or arising, under, for or in respect of the Notes, the Guarantees and any and all other present and future Note Obligations;

"SPECIFIED PRIORITY LIEN" means the Lien on the Collateral granted by the Grantor to the Credit Agreement Agent for the benefit of the Lenders under the Priority Security Agreement which Lien has priority to the Lien hereof to the extent and on the terms set forth in Article 10 of the Indenture;

"STOCK" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934);

"SUPPORTING OBLIGATIONS" means all "supporting obligations" as such term is defined in the Code, including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments or Investment Property;

"TRADEMARK SECURITY AGREEMENTS" means the Trademark Security Agreements made in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations by each applicable Obligor;

"TRADEMARK LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right to use any Trademark; and

"TRADEMARKS" means all of the following now owned or hereafter existing, adopted or acquired by any Obligor: (a) all trademarks, trade names, limited liability company names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, (b) all reissues, extensions or renewals thereof, and (c) all goodwill associated with or symbolized by any of the foregoing.

## 2. GRANT OF LIEN

- (a) To secure the prompt and complete payment, performance and observance of all of the Secured Obligations, the Grantor hereby grants, assigns, conveys, mortgages, pledges, hypothecates and transfers to the Trustee as the Collateral Agent for the benefit of all of the present and future Holders of Secured Obligations, a Lien upon all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of the Grantor (including under any trade names, styles or derivations thereof), and whether owned or consigned by

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or to, or leased from or to the Grantor, and regardless of where located (all of which being hereinafter collectively referred to as the "COLLATERAL"), including:

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all Documents;

- (iv) all General Intangibles (including payment intangibles and software, but excluding any Contract that by its terms prohibits any Lien, where such prohibition is effective under applicable law, including Sections 9-406 and 9-408 of the Code);
- (v) all Goods (including Inventory, P&E and Fixtures);
- (vi) all Instruments;
- (vii) all Investment Property;
- (viii) all Deposit Accounts;
- (ix) all money, cash or cash equivalents of the Grantor;
- (x) all Supporting Obligations and all Letter-of-Credit Rights of the Grantor;
- (xi) all commercial tort claims; and
- (xii) to the extent not otherwise included, all Proceeds, tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing;

PROVIDED, that the Collateral shall not include any property which is an Excluded Asset for as long as such property is an Excluded Asset, but if any such property at any time ceases to be an Excluded Asset, it shall immediately and automatically become part of the Collateral without need for any additional grant of a security interest therein.

- (b) In addition, to secure the prompt and complete payment, performance and observance of the Secured Obligations and in order to induce the Trustee and the Initial Purchasers as aforesaid, the Grantor hereby grants to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, a right of setoff against the property of the Grantor held by the Credit Agreement Agent, the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, consisting of property described above in Section 2(a) now or hereafter in the possession or custody of or in transit to the Credit Agreement Agent, the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, for any purpose, including safekeeping, collection or pledge, for the account of the Grantor, or as to which the Grantor may have any right or power.

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### 3. THE COLLATERAL AGENT'S RIGHTS; LIMITATIONS ON THE COLLATERAL AGENT'S OBLIGATIONS

- (a) It is expressly agreed by the Grantor that, anything herein to the contrary notwithstanding, the Grantor shall remain liable under each of its Contracts and each of its Licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Trustee, the Collateral Agent nor any present or future Holder of Secured Obligations shall have any obligation or liability under any Contract or License by reason of or arising out of this Security Agreement or the granting herein of a Lien thereon or the receipt by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations of any payment relating to any Contract or License pursuant hereto. Neither the Trustee, the Collateral Agent nor any present or future Holder of Secured Obligations shall be required or obligated in any manner to perform or fulfill any of the obligations of the Grantor under or pursuant to any Contract or License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or License, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.
- (b) Subject to Article 10 of the Indenture, the Collateral Agent may at any time after an Event of Default shall have occurred and be continuing (or if any rights of set-off (other than set-off against an

Account arising under the Contract giving rise to the same Account) or contra accounts may be asserted with respect to the following), without prior notice to the Grantor, notify Account Debtors and other Persons obligated on the Collateral that the Collateral Agent has a security interest therein, and that payments shall be made directly to the Collateral Agent . Upon the request of the Collateral Agent, the Grantor shall notify Account Debtors and other Persons obligated on the Collateral. Once any such notice has been given to any Account Debtor or other Person obligated on such Collateral, the Grantor shall not give any contrary instructions to such Account Debtor or other such Person without the Collateral Agent's prior written consent.

- (c) Subject to Article 10 of the Indenture, the Collateral Agent may at any time in the name of the Grantor or if an Event of Default shall have occurred and be continuing, in the Collateral Agent's own name, or in the name of a nominee of the Collateral Agent, communicate (by mail, telephone, facsimile or otherwise) with Account Debtors, parties to Contracts, obligors in respect of Instruments and obligors in respect of Chattel Paper and/or payment intangibles to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount and terms of, and any other matter relating to, any such Accounts, Contracts, Instruments or Chattel Paper and/or payment intangibles. If a Default or Event of Default shall have occurred and be continuing, the Grantor, at its own expense, shall cause the independent certified public accountants then engaged by the Grantor to prepare and deliver to the Collateral Agent at any time and from time to time promptly upon the Collateral Agent's request the following reports with respect to the Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as the Collateral Agent may request. The Grantor, at its own expense, shall deliver to the Collateral Agent the results of each physical verification, if any, which the Grantor may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory.

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#### 4. REPRESENTATIONS AND WARRANTIES

The Grantor represents and warrants that:

- (a) The Grantor has rights in and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder free and clear of any and all Liens other than Permitted Liens (which Permitted Liens include the Specified Priority Lien).
- (b) No effective security agreement, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is on file or of record in any public office, except such as may have been filed (i) by the Grantor in favor of the Credit Agreement Agent pursuant to the Credit Agreement or the other Priority Lien Documents; (ii) by the Grantor in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations pursuant to this Security Agreement or the other Note Documents; and (iii) in connection with any other Permitted Liens pursuant to the Indenture.
- (c) This Security Agreement is effective to create a valid and continuing Lien on and, upon the filing of the appropriate financing statements in the filing offices listed on Schedule I hereto, a perfected Lien in favor of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, on the Collateral with respect to which a Lien may be perfected by filing pursuant to the Code. Such Lien is prior to all other Liens, except Priority Liens and Permitted Liens that would be prior to Liens in favor of the Collateral Agent as a matter of law, and is enforceable as such as against any and all creditors of and purchasers from the Grantor (other than purchasers and lessees of Inventory in the ordinary course of business). All action by the Grantor reasonably necessary or desirable to protect and perfect such Lien on each item of the Collateral has been duly taken.
- (d) Schedule II hereto lists all Instruments, Letter-of-Credit Rights and Chattel Paper of the Grantor. All action by the Grantor necessary or desirable to protect and perfect the Lien of the Collateral Agent on each item set forth on Schedule II (including the delivery of all originals thereof to the Collateral Agent and the legending of all Chattel Paper as required by Section 5(b) hereof; PROVIDED that prior to the Discharge of Priority Lien Indebtedness, such items need not be delivered to the Collateral Agent so long as they are held by the

Credit Agreement Agent) has been duly taken. The Lien of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, on the Collateral listed on Schedule II hereto is prior to all other Liens, except for Specified Priority Liens and Permitted Liens that would be prior to the Liens in favor of the Collateral Agent as a matter of law, and is enforceable as such against any and all creditors of and purchasers from the Grantor.

- (e) The Grantor's name as it appears in official filings in the state of its incorporation or other organization, the type of entity of the Grantor (including corporation, partnership, limited partnership or limited liability company), organizational identification number issued by the Grantor's state of incorporation or organization or a statement that no such number has been issued, the Grantor's state of organization or incorporation, the location of the Grantor's chief executive office, principal place of business, offices, all warehouses and premises where Collateral is stored or located, and the locations of all of its books and records concerning the Collateral are set forth on Schedule III hereto.

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- (f) With respect to the Accounts, (i) they represent bona fide sales of Inventory or rendering of services to Account Debtors in the ordinary course of the Grantor's business and are not evidenced by a judgment, Instrument or Chattel Paper; (ii) except as permitted under the Credit Agreement, there are no setoffs, claims or disputes existing or asserted with respect thereto and the Grantor has not made any agreement with any Account Debtor for any extension of time for the payment thereof, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance allowed by the Grantor in the ordinary course of its business for prompt payment and disclosed to the Collateral Agent; (iii) to the Grantor's knowledge, there are no facts, events or occurrences which are not permitted under the Credit Agreement which in any way impair the validity or enforceability thereof or could reasonably be expected to reduce the amount payable thereunder as shown on the Grantor's books and records and any invoices and statements delivered to the Collateral Agent with respect thereto; and (iv) the Grantor has not received any notice of proceedings or actions which are threatened or pending against any Account Debtor which might result in any adverse change in such Account Debtor's financial condition. Further with respect to the Accounts (x) the amounts shown on all invoices, statements and collateral reports which may be delivered to the Credit Agreement Agent or the Collateral Agent with respect thereto are actually and absolutely owing to the Grantor as indicated thereon and are not in any way contingent; (y) no payments have been or shall be made thereon except payments immediately delivered to the applicable Blocked Accounts, to Credit Agreement Agent or to the Collateral Agent; and (z) to the Grantor's knowledge, all Account Debtors have the capacity to contract.
- (g) With respect to any Inventory, (i) such Inventory is located at one of the Grantor's locations set forth on Schedule III hereto, PROVIDED that upon 15 days' prior written notice to the Collateral Agent and upon the Collateral Agent having filed UCC-1 financing statements, the Grantor may amend Schedule III; (ii) no Inventory is now, or shall at any time or times hereafter be stored at any other location without the Collateral Agent's prior consent, which shall not be unreasonably withheld, and if the Collateral Agent gives such consent, the Grantor will concurrently therewith obtain, to the extent required by the Indenture, bailee, landlord and mortgagee agreements; (iii) the Grantor has good, indefeasible and merchantable title to such Inventory and such Inventory is not subject to any Lien or security interest or document whatsoever except for the Priority Liens, the Lien granted to the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, and Permitted Liens pursuant to the Indenture; (iv) such Inventory is not subject to any licensing, patent, royalty, trademark, tradename or copyright agreements with any third parties which would require any consent of any third party upon sale or disposition of that Inventory or the payment of any monies to any third party as a precondition of such sale or other disposition; and (v) the completion of manufacture, sale or other disposition of such Inventory by the Collateral Agent following an Event of Default shall not require the consent of any Person other than as provided in the Indenture and shall not constitute a breach or default under any contract or agreement to which the Grantor is a party or to which such property is subject.

- (h) The Grantor has no interest in, or title to, any Patent, Trademark or Copyright except as set forth in Schedule IV hereto. This Indenture is effective to create a valid and continuing Lien on and, upon filing of the Copyright Security Agreements with the United States Copyright Office and filing of the Patent Security Agreements and the Trademark Security Agreements with the United States Patent and Trademark Office, perfected Liens in favor of the Collateral Agent on the Grantor's Patents, Trademarks

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(other than state registered trademarks) and Copyrights and such perfected Liens are enforceable as such as against any and all creditors of and purchasers from the Grantor. Upon filing of the Copyright Security Agreements with the United States Copyright Office and filing of the Patent Security Agreements and the Trademark Security Agreements with the United States Patent and Trademark Office and the filing of appropriate financing statements listed on Schedule I hereto, all action necessary or desirable to protect and perfect the Collateral Agent's Lien on the Grantor's Patents, Trademarks (other than state registered trademarks) or Copyrights shall have been duly taken.

- (i) The Grantor does not hold for sale or lease or lease as lessor any goods that are covered by a certificate of title statute of any state other than goods of a kind that it is in the business of selling.
- (j) All motor vehicles owned by the Grantor which are P&E are listed on Schedule V hereto, by model, model year and vehicle identification number ("VIN") except in respect to any vehicles which are Excluded Assets. The Grantor shall provide notice to the Collateral Agent of, and deliver to the Collateral Agent motor vehicle title certificates for, all motor vehicles that are P&E and that are covered by a certificate of title from time to time owned by it, and shall cause such title certificates to be filed (with the Collateral Agent's lien noted thereon) in the appropriate state motor vehicle filing office; PROVIDED that prior to the Discharge of Priority Lien Indebtedness, such motor vehicle title certificates need not be delivered to the Collateral Agent so long as they are held by the Credit Agreement Agent.

## 5. COVENANTS

The Grantor covenants and agrees with the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, that from and after the date of this Security Agreement and until the date of termination of the Liens and this Security Agreement:

- (a) Further Assurances: Pledge of Instruments; Chattel Paper.
- (i) At any time and from time to time, upon the written request of the Collateral Agent and at the sole expense of the Grantor, the Grantor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as the Collateral Agent may deem desirable to obtain the full benefits of this Security Agreement and of the rights and powers herein granted, including (A) using its best efforts to secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of the Collateral Agent of any License or Contract held by the Grantor and to enforce the security interests granted hereunder; and (B) filing any financing or continuation statements under the Uniform Commercial Code with respect to the Liens granted hereunder or under the Indenture or any other Note Document as to those jurisdictions that are not Uniform Commercial Code jurisdictions.
- (ii) Unless the Collateral Agent shall otherwise consent in writing (which consent may be revoked), then upon, and concurrently with, the discharge of Priority Lien Indebtedness, without notice or demand, the Grantor shall deliver to the Collateral Agent all Collateral consisting of negotiable Documents, certificated securities, Chattel Paper and Instruments (in each case, accompanied by stock

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powers, allonges or other instruments of transfer executed in blank) promptly after such the Grantor receives the same.

- (iii) The Grantor shall obtain or use its commercially reasonable best efforts to obtain waivers or subordinations of Liens from landlords and mortgagees, and the Grantor shall in all instances obtain signed acknowledgements of the Collateral Agent's Liens from bailees having possession of any of the Grantor's Goods that they hold for the benefit of Credit Agreement Agent or the Collateral Agent.
- (iv) The Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code or such jurisdiction; or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Grantor is an organization, the type of organization and any organization identification number issued to the Grantor; and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Grantor agrees to furnish any such information to the Collateral Agent promptly upon request. The Grantor also ratifies its authorization for the Collateral Agent to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.
- (v) The Grantor shall promptly, and in any event within two (2) Business Days after the same is acquired by it, notify the Collateral Agent of any commercial tort claim (as defined in the Code) acquired by it and unless otherwise consented by Credit Agreement Agent and the Collateral Agent, the Grantor shall enter into a supplement to this Security Agreement, granting to the Collateral Agent a Lien in such commercial tort claim.

(b) Maintenance of Records

The Grantor shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, including a record of any and all payments received and any and all credits granted with respect to the Collateral and all other dealings with the Collateral. The Grantor shall mark its books and records pertaining to the Collateral to evidence this Security Agreement and the Liens granted hereby. If in accordance with, and to the extent consistent with, the terms of the Indenture, the Grantor retains possession of any Chattel Paper or Instruments with the Collateral Agent's consent, such Chattel Paper and Instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of General Electric Capital Corporation, as Agent, for the benefit of Agent and certain Lenders and of The Bank of New York, as the Collateral Agent, for the benefit of the Collateral Agent and certain holders of Senior Notes."

(c) Covenants Regarding Patent, Trademark and Copyright Collateral

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- (i) The Grantor shall notify the Collateral Agent immediately if it knows or has reason to know that any application or registration relating to any Patent, Trademark or Copyright (now or hereafter existing) may become abandoned or dedicated, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding the Grantor's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same.
- (ii) In no event shall the Grantor, either directly or through any agent, employee, licensee or designee, file an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States



Copyright Office or any similar office or agency without giving the Collateral Agent prior written notice thereof, and, upon request of the Collateral Agent, the Grantor shall execute and deliver any and all Patent Security Agreements, Copyright Security Agreements or Trademark Security Agreements as the Collateral Agent may request to evidence the Collateral Agent's Lien on such Patent, Trademark or Copyright, and the General Intangibles of the Grantor relating thereto or represented thereby.

- (iii) The Grantor shall take all actions necessary or requested by the Collateral Agent to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of the Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless the Grantor shall determine that such Patent, Trademark or Copyright is not material to the conduct of its business.
- (iv) In the event that any of the Patent, Trademark or Copyright Collateral is infringed upon, or misappropriated or diluted by a third party, the Grantor shall notify the Collateral Agent promptly after the Grantor learns thereof. The Grantor shall, unless it shall reasonably determine that such Patent, Trademark or Copyright Collateral is in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as the Collateral Agent shall deem appropriate under the circumstances to protect such Patent, Trademark or Copyright Collateral.

(d) Indemnification

In any suit, proceeding or action brought by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations relating to any Collateral for any sum owing with respect thereto or to enforce any rights or claims with respect thereto, the Grantor will save, indemnify and keep the Trustee, the Collateral Agent and the present and future Holders of Secured Obligations harmless from and against all reasonable expense (including reasonable attorneys' fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the Account Debtor or other Person obligated on the Collateral, arising out of a breach by the Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to, or in favor of, such obligor or

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its successors from the Grantor, except in the case of the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, to the extent such expense, loss or damage is attributable solely to the gross negligence or willful misconduct of the Trustee, the Collateral Agent or such present or future Holder of Secured Obligations as finally determined by a court of competent jurisdiction. All such obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations.

(e) Compliance with Terms of Accounts, etc.

In all material respects, the Grantor will perform and comply with all obligations in respect of the Collateral and all other agreements to which it is a party or by which it is bound relating to the Collateral.

(f) Limitation on Liens on Collateral

The Grantor will not create, permit or suffer to exist, and will defend the Collateral against, and take such other action as is necessary to remove, any Lien on the Collateral except Permitted Liens (including Specified Priority Liens), and will defend the right, title and interest of the Trustee, the Collateral Agent and the present and future Holders of Secured Obligations in and to any of the Grantor's rights under the Collateral against the claims and demands of all

Persons whomsoever.

(g) Limitations on Disposition

The Grantor will not sell, license, lease, transfer or otherwise dispose of any of the Collateral, or attempt or contract to do so except as permitted by the Indenture.

(h) Notices

The Grantor will advise the Collateral Agent promptly, in reasonable detail, (i) of any Lien (other than Permitted Liens) or claim made or asserted against any of the Collateral; and (ii) of the occurrence of any other event which would have a material adverse effect on the aggregate value of the Collateral or on the Liens created hereunder or under the Indenture or any other Note Document.

(i) Further Identification of Collateral

The Grantor will, if so requested by the Collateral Agent, furnish to the Collateral Agent, as often as the Collateral Agent requests, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in such detail as the Collateral Agent may specify.

(j) Good Standing Certificates

At the request of the Collateral Agent, but not more frequently than once during each calendar quarter, the Grantor shall, unless the Collateral Agent shall otherwise consent, provide to the Collateral Agent a certificate of good standing from its state of incorporation or organization.

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(k) No Reincorporation

Without limiting the prohibitions on Change of Control involving the Grantor contained in the Indenture, the Grantor shall not reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof without the prior written consent of the Collateral Agent.

(l) Terminations; Amendments Not Authorized

The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of the Collateral Agent and agrees that it will not do so without the prior written consent of the Collateral Agent, subject to the Grantor's rights under Section 9-509(d)(2) of the Code.

(m) Authorized Terminations

All security interests granted herein shall continue until released in accordance with the Indenture.

(n) Government Contracts

The Grantor agrees that if they are a party to any contract or agreement with any Governmental Authority they will, if requested by the Collateral Agent, take such actions as may be necessary to comply with the Federal Assignment of Claims Act, as amended (31 U.S.C. Section 3727) or any similar state or local law pursuant to which the consideration due the Grantor thereunder is \$3,000,000 or more in the aggregate.

6. THE COLLATERAL AGENT'S APPOINTMENT AS ATTORNEY-IN-FACT

On the Closing Date, the Grantor shall execute and deliver to the Collateral Agent powers of attorney (collectively, the "POWER OF ATTORNEY") substantially in the forms attached hereto as Exhibit A-1 and A-2, respectively. The powers of attorney granted pursuant to the Power of Attorney are powers coupled with an interest and shall be irrevocable until the payment and performance in full of the Secured Obligations. The powers conferred on the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, under the Power of Attorney are solely to protect the Collateral Agent's interests (for the benefit of the present

and future Holders of Secured Obligations) in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent agrees that (a) except for the powers granted in clause (h) of the Power of Attorney, it shall not exercise any power or authority granted under the Power of Attorney unless an Event of Default has occurred and is continuing, (b) the exercise of any power or authority granted under the Power of Attorney shall be subject to Article 10 of the Indenture, and (c) the Collateral Agent shall account for any moneys received by the Collateral Agent in respect of any foreclosure on or disposition of Collateral pursuant to the Power of Attorney provided that neither the Collateral Agent nor any present or future Holder of Secured Obligations shall have any duty as to any Collateral, and the Collateral Agent and the present and future Holders of Secured Obligations shall be accountable only for amounts they actually receive as a result of the exercise of such powers. NONE OF THE COLLATERAL AGENT, THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO GRANTOR FOR ANY ACT OR

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FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES TO THE EXTENT ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

7. REMEDIES; RIGHTS UPON DEFAULT

(a) Subject to Article 10 of the Indenture: (i) in addition to all other rights and remedies granted to it under this Security Agreement, the Indenture, the other Note Documents and under any other instrument or agreement securing, evidencing or relating to any of the Secured Obligations, if any Event of Default shall have occurred and be continuing, the Collateral Agent may exercise all rights and remedies of a secured party under the Code; (ii) without limiting the generality of the foregoing, the Grantor expressly agrees that in any such event the Collateral Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code and other applicable law), may forthwith enter upon the premises of the Grantor where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving the Grantor or any other Person notice and opportunity for a hearing on the Collateral Agent's claim or action and may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, at any exchange at such prices as it may deem acceptable, for cash or on credit or for future delivery without assumption of any credit risk; (iii) the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the present and future Holders of Secured Obligations, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption the Grantor hereby releases; (iv) such sales may be adjourned and continued from time to time with or without notice; (v) the Collateral Agent shall have the right to conduct such sales on the Grantor's premises or elsewhere and shall have the right to use the Grantor's premises without charge for such time or times as the Collateral Agent deems necessary or advisable; (vi) if any Event of Default shall have occurred and be continuing, the Grantor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at a place or places designated by the Collateral Agent which are reasonably convenient to the Collateral Agent and the Grantor, whether at the Grantor's premises or elsewhere; (vii) until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent; (viii) the Collateral Agent shall have no obligation to the Grantor to maintain or preserve the rights of the Grantor as against third parties with respect to Collateral while Collateral is in the

possession of the Collateral Agent; (ix) the Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the present and future Holders of Secured Obligations), with respect to such appointment

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without prior notice or hearing as to such appointment; (x) the Collateral Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale to the Secured Obligations as provided in the Indenture, and only after so applying such net proceeds, and after the payment by the Collateral Agent for application to amounts secured by the Priority Lien and after payment by the Collateral Agent of any other amount required by any provision of law, need the Collateral Agent account for the surplus, if any, to the Grantor; (xi) to the maximum extent permitted by applicable law, the Grantor waives all claims, damages, and demands against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations arising out of the repossession, retention or sale of the Collateral except to the extent arising out of the gross negligence or willful misconduct of the Trustee, the Collateral Agent or such present or future Holder of Secured Obligations as finally determined by a court of competent jurisdiction; (xii) the Grantor agrees that ten (10) days prior notice by the Collateral Agent of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters; and (xiii) the Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all of the Secured Obligations, including any attorneys' fees or other expenses incurred by the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations to collect such deficiency.

- (b) Except as otherwise specifically provided herein, the Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Indenture or any Collateral.
- (c) To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, the Grantor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (i) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as the Grantor, for expressions of interest in acquiring all or any portion of such Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets; (ix) to dispose of assets in wholesale rather than retail markets; (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment; (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral; or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the

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Collateral Agent in the collection or disposition of any of the

Collateral. The Grantor acknowledges that the purpose of this Section 7(c) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7(c). Without limitation upon the foregoing, nothing contained in this Section 7(c) shall be construed to grant any rights to the Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7(c).

- (d) Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall be required to make any demand upon, or pursue or exhaust any of their rights or remedies against, the Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof. Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, and all of its and their rights hereunder or under the Indenture or any other Note Document shall be cumulative. To the extent it may lawfully do so, the Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, any valuation, stay, appraisal, extension, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise.

#### 8. GRANT OF LICENSE TO USE INTELLECTUAL PROPERTY

For the purpose of enabling the Collateral Agent to exercise rights and remedies under Section 7 hereof (including, without limiting the terms of Section 7 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby grants to the Collateral Agent, for the benefit of the Collateral Agent for the present and future Holders of Secured Obligations, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by the Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

#### 9. LIMITATION ON THE COLLATERAL AGENT'S DUTY IN RESPECT OF COLLATERAL

The Collateral Agent shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any present or future Holder of Secured Obligations shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such present or future

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Holder of Secured Obligations, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

#### 10. REINSTATEMENT

This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of the Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or

performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

#### 11. NOTICES

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give and serve upon any other party any communication with respect to this Security Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be given in the manner, and deemed received, as provided for under the Indenture.

#### 12. SEVERABILITY

Whenever possible, each provision of this Security Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. This Security Agreement is to be read, construed and applied together with the Indenture and the other Note Documents which, taken together, set forth the complete understanding and agreement of the Trustee, the Collateral Agent, the present and future Holders of Secured Obligations and the Grantor with respect to the matters referred to herein and therein.

#### 13. NO WAIVER; CUMULATIVE REMEDIES

Neither the Trustee, the Collateral Agent nor any present or future Holders of Secured Obligations shall by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Collateral Agent and then only to the extent therein set forth. A waiver by the Collateral Agent of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Collateral Agent would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of the Trustee, the Collateral Agent or any present or future Holder of Secured Obligations, any right, power or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or

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privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. None of the terms or provisions of this Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the Collateral Agent and the Grantor.

#### 14. LIMITATION BY LAW

All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

#### 15. ASSIGNMENT

The Collateral Agent may assign all of its rights and delegate all of its obligations hereunder to any successor Collateral Agent as provided in the Indenture. The Collateral Agent and each Holder of Secured Obligations may assign, indorse or transfer any instrument evidencing all or any part of the Secured Obligations as provided in, and in accordance with, the Indenture, and the holder of such instrument shall be entitled to the benefits of this Security Agreement.

#### 16. TERMINATION OF THIS SECURITY AGREEMENT

The security interests granted hereby shall continue in full force and effect until released in accordance with the provisions of the Indenture.

17. SUCCESSORS AND ASSIGNS

This Security Agreement and all obligations of the Grantor hereunder shall be binding upon the successors and assigns of the Grantor (including any debtor-in-possession on behalf of the Grantor) and shall, together with the rights and remedies of the Trustee, the Collateral Agent, and the present and future Holders of Secured Obligations, hereunder, inure to the benefit of the Trustee, the Collateral Agent, and the present and future Holders of Secured Obligations, their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Secured Obligations or any portion thereof or interest therein shall in any manner affect the Lien granted to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, hereunder. The Grantor may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Security Agreement.

18. COUNTERPARTS

This Security Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one and the same agreement.

19. GOVERNING LAW

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EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE INDENTURE OR ANY OTHER NOTE DOCUMENT, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW). GRANTOR HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK, SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN GRANTOR, THE TRUSTEE, THE COLLATERAL AGENT OR ANY OF THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS PERTAINING TO THIS SECURITY AGREEMENT, THE INDENTURE OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT THE INDENTURE OR ANY OF THE OTHER NOTE DOCUMENTS, PROVIDED, THAT THE TRUSTEE, THE COLLATERAL AGENT, ANY OF THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS AND GRANTOR ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK, AND, PROVIDED, FURTHER, NOTHING IN THIS SECURITY AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE COLLATERAL AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE SECURED OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF COLLATERAL AGENT. GRANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND GRANTOR HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. GRANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO GRANTOR AT THE ADDRESS SET FORTH IN THE INDENTURE AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILES, PROPER POSTAGE PREPAID.

20. WAIVER OF JURY TRIAL

BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT DISPUTES ARISING HEREUNDER OR RELATING HERETO BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG THE

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TRUSTEE, THE COLLATERAL AGENT, THE PRESENT OR FUTURE HOLDERS OF SECURED OBLIGATIONS AND GRANTOR ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED IN CONNECTION WITH, THIS

21. INDEMNIFICATION

The Grantor will pay, reimburse the Trustee, the Collateral Agent and the Holders of Notes for, and to the fullest extent lawful defend and indemnify each of them against, all claims, liabilities, taxes, costs and expenses of every type and nature (including, without limitation, the reasonable fees and charges of attorneys, advisors, auditors and consultants acting for any of them) incurred by any of them as a result of or in connection with the creation, perfection, protection or enforcement of the security interests granted hereby or the exercise or enforcement of any right or remedy under this Security Agreement or to prove, preserve, protect or enforce any such security interest or any claim based upon such security interests in any lawsuit, bankruptcy case or other insolvency or liquidation proceeding.

In accepting, holding and enforcing the security interests, rights and remedies granted hereby or arising hereunder or otherwise acting as Collateral Agent, the Collateral Agent may rely upon and enforce each and all of the provisions of Article 7 of the Indenture conferring any rights, powers, immunities, indemnities or benefits upon the Trustee, including (without limitation) the indemnification provided by Section 7.07(a) of the Indenture, and the Grantor agrees to be bound by each and all of such provisions as fully as if set forth at length herein.

22. SECTION TITLES

The Section titles contained in this Security Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

23. NO STRICT CONSTRUCTION

The parties hereto have participated jointly in the negotiation and drafting of this Security Agreement. In the event an ambiguity or question of intent or interpretation arises, this Security Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Security Agreement.

24. ADVICE OF COUNSEL

Each of the parties represents to each other party hereto that it has discussed this Security Agreement and, specifically, the provisions of Section 19 and Section 20, with its counsel.

25. BENEFIT OF HOLDERS

All Liens granted or contemplated hereby shall be for the benefit of the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Indenture.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

GREAT NORTHERN EQUIPMENT, INC.,  
as the Grantor

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: Secretary

THE BANK OF NEW YORK,  
as the Trustee and the Collateral Agent

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory

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EXHIBIT A-1

POWER OF ATTORNEY

This Power of Attorney is executed and delivered by GREAT NORTHERN EQUIPMENT, INC., a Montana corporation (the "GRANTOR"), to The Bank of New York (hereinafter referred to as "ATTORNEY"), as the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations, under an Indenture dated as of June 17, 2002 and a Security Agreement dated as of June 17, 2002, and other related documents (each as further amended, modified or supplemented, as applicable, from time to time, the "NOTE DOCUMENTS"). No person to whom this Power of Attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from the Grantor as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and the Grantor irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this Power of Attorney. The power of attorney granted hereby is coupled with an interest, and may not be revoked or canceled by the Grantor without Attorney's written consent.

The Grantor hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), with full power of substitution, as the Grantor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in the name of the Grantor or in its own name, from time to time in Attorney's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purposes of the Note Documents, and, without limiting the generality of the foregoing, the Grantor hereby grants to Attorney the power and right, on behalf of the Grantor, without notice to or assent by the Grantor, and at any time, to do the following: (a) change the mailing address of the Grantor, open a post office box on behalf of the Grantor, open mail for the Grantor, and ask, demand, collect, give acquittances and receipts for, take possession of, endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in connection with any property of the Grantor; (b) effect any repairs to any asset of the Grantor, or continue to obtain any insurance and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any taxes, liens, security interests, or other encumbrances levied or placed on or threatened against the Grantor or its property; (d) defend any suit, action or proceeding brought against the Grantor if the Grantor does not defend such suit, action or proceeding or if Attorney believes that the Grantor is not pursuing such defense in a manner that will maximize the recovery to Attorney, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Attorney may deem appropriate; (e) file or prosecute any claim, litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Attorney for the purpose of collecting any and all such moneys due to the Grantor whenever payable and to enforce any other right in respect of the Grantor's property; (f) cause the certified public accountants then engaged by the Grantor to prepare and deliver to Attorney at any time and from time to time, promptly upon Attorney's request, the following reports: (1) a reconciliation of all accounts, (2) an aging of all accounts, (3) trial balances, (4) test verifications of such accounts as Attorney may request, and (5) the results of each physical verification of inventory; (g) communicate in its own name with any party to any Contract with regard to the assignment of the right, title and interest of the Grantor in and under the Contracts and other matters relating thereto; (h) to file such financing statements with respect to the Security Agreement, with or without the Grantor's signature, or to file a photocopy of the Security Agreement in substitution for a financing statement, as the Agent may deem appropriate and to execute in

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the Grantor's name such financing statements and amendments thereto and continuation statements which may require the Grantor's signature; and (i) execute, in connection with any sale provided for in any Note Document, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral and to otherwise direct such sale or resale, all as though Attorney were the absolute owner of the property of the Grantor for all purposes, and to do, at Attorney's option and the Grantor's expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary to perfect, preserve, or realize upon the Grantor's property or assets

and Attorney's Liens thereon, all as fully and effectively as the Grantor might do. The Grantor hereby ratifies, to the extent permitted by law, all that said Attorney shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, this Power of Attorney is executed by the Grantor and the Grantor has caused its seal to be affixed pursuant to the authority of its board of directors on June \_\_, 2002.

ATTEST:

By: /s/ T. Eastman  
Name: T. Eastman  
Title: V.P.

NOTARY PUBLIC CERTIFICATE

On this 16th day of June, 2002, T. Eastman who is personally known to me appeared before me in his/her capacity as the V.P. of GREAT NORTHERN EQUIPMENT, INC. (the "Grantor") and executed on behalf of the Grantor the Power of Attorney in favor of The Bank of New York to which this Certificate is attached.

/s/ Jeffrey Gimpel

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Notary Public

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EXHIBIT A-2

POWER OF ATTORNEY

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF NEW YORK )

KNOW ALL MEN BY THESE PRESENTS, GREAT NORTHERN EQUIPMENT, INC., a Montana corporation its principal place of business at 4899 West 2100 South, Salt Lake City, Utah 84120 (hereinafter called the "GRANTOR"), hereby appoints and constitutes The Bank of New York (the "SECURED PARTY") as the Trustee and the Collateral Agent under an Indenture dated as of June 17, 2002 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among, INTER ALIA, the Grantor and Secured Party, its true and lawful attorney, with full power of substitution, and with full power and authority, upon the occurrence and during the continuance of an Event of Default (defined in the Indenture) to perform the following acts on behalf of the Grantor:

- (i) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of the Grantor in and to any letters patent, design and plant patents, utility models, industrial designs, inventory certificates and statutory invention registrations of the United States or any other country or political subdivision thereof, and all registrations, recordings, reissues, continuations, continuations-in-part, term restorations and extensions thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose;
- (ii) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of Debtor in and to any trademarks, trade names, trade styles and service marks, and all registrations, recordings, reissues, extensions and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose;
- (iii) For the purpose of granting, selling, licensing or otherwise disposing of all right, title and interest of Debtor in and to any copyrights, and all registrations, recordings, extensions and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of transfer or other papers necessary or advisable to effect such purpose; and

(iv) To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Secured Party may in its sole but reasonable discretion determine.

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This power of attorney is made pursuant to a Copyright Security Agreement, a Patent Security Agreement and a Trademark Security Agreement, each of which is dated the date hereof, as amended from time to time, by the Grantor in favor of Secured Party and will take effect solely for the purposes of Section 7 of the Security Agreement and is subject to the conditions thereof and may not be revoked until the payment or performance in full of all "Note Obligations" as defined in the Indenture.

Dated as of June 17, 2002.

GREAT NORTHERN EQUIPMENT, INC.

By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: Secretary

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GREAT NORTHERN EQUIPMENT, INC.  
TRADEMARK SECURITY AGREEMENT  
(IN FAVOR OF THE COLLATERAL AGENT)

THIS TRADEMARK SECURITY AGREEMENT, dated as of June 17, 2002 (this "TRADEMARK SECURITY AGREEMENT") between GREAT NORTHERN EQUIPMENT, INC., a Montana corporation (the "GRANTOR") and The Bank of New York in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture and Security Agreement referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among H&E Equipment Services L.L.C., a Louisiana limited liability company ("H&E LLC"), H&E Finance Corp., a Delaware corporation (together with H&E LLC, each individually an "ISSUER" and collectively the "ISSUERS"), the guarantors named therein (including the Grantor) and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain GREAT NORTHERN EQUIPMENT, INC. Trademark Security Agreement dated as of the date hereof by the Grantor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT"), the Grantor has granted to the Credit Agreement Agent a first-priority lien and security interest in the Trademark Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 among Grantor, H&E LLC (together with Grantor each individually, a "BORROWER," and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor, pursuant to the terms of the Indenture and the GREAT NORTHERN EQUIPMENT, INC. Security Agreement (in favor of the Collateral Agent) (including all annexes, exhibits or schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "SECURITY AGREEMENT"), dated as of the date hereof, by the Grantor in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations (as defined below), has agreed to grant the Collateral Agent a continuing Lien on the Trademark Collateral and a security interest in the Trademark Collateral in accordance with this Trademark Security Agreement;
- (D) Pursuant to the Security Agreement, the Grantor is required to execute and deliver to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations this Trademark Security Agreement; and
- (E) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Trademark Security Agreement as security for the Secured Obligations upon any and all of the Trademark Collateral are subordinate in ranking to all present and future Priority Liens upon

any and all of the Trademark Collateral; and (ii) the Note Liens upon any and all Trademark Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor hereby agrees with the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations follows:

1. DEFINED TERMS

All capitalized terms used but not otherwise defined herein have the meanings given to them in the Indenture. The following terms shall have (unless otherwise provided elsewhere in this Trademark Security Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"TRADEMARK COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"TRADEMARK LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right to use any Trademark; and

"TRADEMARKS" means all of the following now owned or hereafter existing, adopted or acquired by any Obligor: (a) all trademarks, trade names, limited liability company names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, (b) all reissues, extensions or renewals thereof, and (c) all goodwill associated with or symbolized by any of the foregoing;

"SECURED OBLIGATIONS" means all liability of the Grantor, whenever incurred or arising, under, for or in respect of the Notes, the Subsidiary Guarantees and any and all other present and future Note Obligations.

## 2. GRANT OF SECURITY INTEREST IN TRADEMARK COLLATERAL

To secure the payment of the Secured Obligations, the Grantor hereby grants to the Trustee as the Collateral Agent on behalf of the present and future Holders of Secured Obligations, a continuing security interest in all of the Grantor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the "TRADEMARK COLLATERAL"):

- (a) all of its Trademarks and Trademark Licenses to which the Grantor is a party including those referred to on Schedule I;
- (b) all reissues, continuations or extensions of the foregoing;
- (c) all goodwill of the business connected with the use of, and symbolized by, each Trademark and each Trademark License; and

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- (d) all products and proceeds of the foregoing, including, without limitation, any claim by the Grantor against third parties for past, present or future (i) infringement or dilution of any Trademark or Trademark licensed under any Trademark License or (ii) injury to the goodwill associated with any Trademark or any Trademark licensed under any Trademark License.

## 3. SECURITY AGREEMENT

The security interests granted pursuant to this Trademark Security Agreement are granted in conjunction with the security interests granted to the Collateral Agent for the benefit of all present and future Holders of Secured Obligations, pursuant to the Security Agreement. The Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

## 4. TERMINATION OF THIS TRADEMARK AGREEMENT

The security interests granted hereby shall continue in full force and effect until released in accordance with the provisions of the Indenture.

## 5. COUNTERPARTS

This Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement.

IN WITNESS WHEREOF, the Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

GREAT NORTHERN EQUIPMENT, INC.,  
as the Grantor

By: /s/ T. Eastman  
Name: T. Eastman  
Title: Vice President

ACCEPTED AND ACKNOWLEDGED BY:

THE BANK OF NEW YORK,  
as the Trustee and the Collateral Agent

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory

ACKNOWLEDGMENT OF GRANTOR

STATE OF NEW YORK    )  
                                  ) ss.  
COUNTY OF NEW YORK )

On this 16 day of June, 2002 before me personally appeared Terence Eastman, proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument on behalf of GREAT NORTHERN EQUIPMENT, INC., who being by me duly sworn did depose and say that he/she is an authorized officer of said corporation, that the said instrument was signed on behalf of said corporation as authorized by its Board of Directors and that he/she acknowledged said instrument to be the free act and deed of said corporation.

/s/ Jeffrey Gimpel

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Notary Public

GREAT NORTHERN EQUIPMENT, INC.  
 PATENT SECURITY AGREEMENT  
 (IN FAVOR OF THE COLLATERAL AGENT)

THIS PATENT SECURITY AGREEMENT, dated as of June 17, 2002 (this "PATENT SECURITY AGREEMENT") between GREAT NORTHERN EQUIPMENT, INC., a Montana corporation (the "GRANTOR") and The Bank of New York in its capacity as trustee (in such capacity, the "TRUSTEE") and collateral agent (in such capacity, the "COLLATERAL AGENT") under the Indenture and Security Agreement referred to below.

WHEREAS:

- (A) Pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "INDENTURE") among H&E Equipment Services L.L.C., a Louisiana limited liability company ("H&E LLC"), H&E Finance Corp., a Delaware corporation (together with H&E LLC, each individually an "ISSUER" and collectively the "ISSUERS"), the Grantor, as a guarantor, the other guarantors named therein and the Collateral Agent, the Issuers are issuing, as of the date hereof \$200,000,000 of 11% Senior Secured Notes due 2012, and may, from time to time, issue additional notes in accordance with the provisions of the Indenture (collectively, the "NOTES");
- (B) Pursuant to that certain GREAT NORTHERN EQUIPMENT, INC. Patent Security Agreement dated as of the date hereof by the Grantor in favor of General Electric Capital Corporation, as collateral agent for the secured parties therein (the "CREDIT AGREEMENT AGENT"), the Grantor has granted to the Credit Agreement Agent a first-priority lien and security interest in the Patent Collateral (as defined below) pursuant to the Credit Agreement dated as of June 17, 2002 among Grantor, H&E LLC (together with Grantor each individually, a "BORROWER", and collectively, and jointly and severally, the "BORROWERS"), the other Persons named therein as lenders from time to time (the "LENDERS"), the other Persons named therein as credit parties (the "CREDIT PARTIES"), Credit Agreement Agent, as Arranger, Bank of America, N.A., as Syndication Agent and Fleet Capital Corporation, as Documentation Agent, the Lenders have agreed to make available to Borrowers, upon the terms and conditions thereof, certain revolving credit facilities;
- (C) In order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor, pursuant to the terms of the Indenture and the GREAT NORTHERN EQUIPMENT, INC. Security Agreement (in favor of the Collateral Agent) (including all annexes, exhibits or schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "SECURITY AGREEMENT"), dated as of the date hereof, by the Grantor in favor of the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations (as defined below), has agreed to grant the Collateral Agent a continuing Lien on the Patent Collateral and a security interest in the Patent Collateral in accordance with this Patent Security Agreement;
- (D) Pursuant to the Security Agreement, the Grantor is required to execute and deliver to the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations this Patent Security Agreement; and
- (E) To the extent and upon the terms set forth in Article 10 of the Indenture, (i) the Liens granted by this Patent Security Agreement as security for the Secured Obligations upon any and all of the Patent Collateral are subordinate in ranking to all present and future Priority Liens upon any and all of the Patent Collateral; and (ii) the Note Liens upon any and

all Patent Collateral will be of equal ranking with all present and future Parity Liens.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and in order to induce the Trustee to enter into the Indenture and the Initial Purchasers to purchase the Notes, the Grantor hereby agrees with the Trustee as the Collateral Agent for the benefit of the present and future Holders of Secured Obligations as follows:

1. DEFINED TERMS

All capitalized terms used but not otherwise defined herein have the meanings given to them in the Indenture. The following terms shall have (unless otherwise provided elsewhere in this Patent Security Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined):

"HOLDERS OF SECURED OBLIGATIONS" means the Holders of Notes and all other Persons who at any time hold or acquire any interest in, or any right to enforce, any of the Secured Obligations;

"PATENT COLLATERAL" has the meaning assigned to such term in Section 2 hereof;

"PATENT LICENSE" means rights under any written agreement now owned or hereafter acquired by any Obligor granting any right with respect to any invention on which a Patent is in existence;

"PATENTS" means all of the following in which any Obligor now holds or hereafter acquires any interest: (a) all letters patent of the United States or of any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or any other country, and (b) all reissues, continuations, continuations-in-part or extensions thereof;

"SECURED OBLIGATIONS" means all liability of the Grantor, whenever incurred or arising, under, for or in respect of the Notes, the Subsidiary Guarantees and any and all other present and future Note Obligations.

## 2. GRANT OF SECURITY INTEREST IN PATENT COLLATERAL

To secure the payment of the Secured Obligations, the Grantor hereby grants to the Trustee as the Collateral Agent on behalf of the present and future Holders of Secured Obligations, a continuing security interest in all of the Grantor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the "PATENT COLLATERAL"):

- (a) all the Grantor's Patents and Patent Licenses to which the Grantor is a party including those referred to on Schedule I hereto;
- (b) all reissues, continuations or extensions of the foregoing; and
- (c) all products and proceeds of the foregoing, including, without limitation, any claim by the Grantor against third parties for past, present or future infringement or dilution of any Patent or any Patent licensed under any Patent License.

## 3. SECURITY AGREEMENT

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The security interests granted pursuant to this Patent Security Agreement are granted in conjunction with the security interests granted to the Collateral Agent for the benefit of all present and future Holders of Secured Obligations, pursuant to the Security Agreement. The Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

## 4. COUNTERPARTS

This Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement.

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IN WITNESS WHEREOF, the Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

GREAT NORTHERN EQUIPMENT, INC.,  
as the Grantor



By: /s/ Lindsay C. Jones  
Name: Lindsay C. Jones  
Title: SVP Finance and Secretary

ACCEPTED AND ACKNOWLEDGED BY:

THE BANK OF NEW YORK,  
as the Trustee and the Collateral Agent

By: /s/ M. Ciesmelewski  
Name: M. Ciesmelewski  
Title: Authorized Signatory:

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ACKNOWLEDGMENT OF GRANTOR

STATE OF NEW YORK    )  
                          ) ss.  
COUNTY OF NEW YORK )

On this 17th day of June, 2002 before me personally appeared Lindsay C. Jones, proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument on behalf of GREAT NORTHERN EQUIPMENT, INC., who being by me duly sworn did depose and say that he/she is an authorized officer of said corporation, that the said instrument was signed on behalf of said corporation as authorized by its Board of Directors and that he/she acknowledged said instrument to be the free act and deed of said corporation.

                          /s/ Patricia E. Townsend  
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Notary Public

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