

平成 20 年 4 月

円建てクロスボーダー・シンジケートローンに関する研究会

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(別添)

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**FORM OF
YEN LOAN FACILITY AGREEMENT**

Dated _____, 20__,

by and among

**[INSERT NAME OF BORROWER],
as the Borrower,**

**THE LENDERS
parties hereto,**

and

**[INSERT NAME OF AGENT],
as the Agent**

**JAPAN LAW FORM LOAN AGREEMENT FOR A SYNDICATED UNSECURED
TERM YEN LIBOR OR EURO YEN TIBOR OR YEN TIBOR LOAN.**

TABLE OF CONTENTS

Article 1.	MAKING OF AND TERMS OF LOANS	2
1.1	Loans	2
1.2	Fees	2
1.3	Drawdown Notice	3
1.4	Disbursement by Lenders	3
1.5	Scheduled Interest	4
1.6	Overdue Amounts and Overdue Interest	4
1.7	Break Funding Costs	4
Article 2.	PAYMENTS AND REPAYMENTS	6
2.1	Repayments	6
2.2	Prepayments	6
2.3	Mandatory Prepayments	6
2.4	Procedure for Payment by Borrower	7
2.5	Allocation of Payments	7
2.6	Sharing of Payments	8
2.7	Loan Account and Accounting	8
2.8	Basis of Calculations	9
Article 3.	INCREASED COSTS; ILLEGALITY; TAXES	10
3.1	Increased Costs, Capital Adequacy	10
3.2	Market Interruption	11
3.3	Illegality or Impracticability of Loans	11
3.4	Payments Made Free and Clear	12
3.5	Gross-Up for Taxes	12
Article 4.	CONDITIONS PRECEDENT	14
4.1	Conditions Precedent to the Initial Drawdown	14
4.2	Conditions Precedent to Each Drawdown	15
Article 5.	REPRESENTATIONS AND WARRANTIES	16
5.1	Corporate Status; Power and Authority	16
5.2	Governmental Consents and Actions	17
5.3	Financial Statements; Financial Condition; Material Adverse Change; etc.	17
5.4	Litigation	17
5.5	True and Complete Disclosure	17
5.6	Payment Obligations <i>Pari Passu</i>	18
5.7	Tax Returns and Payments	18
5.8	Compliance with Law	18
5.9	Immunity	18
5.10	Patents, Licenses, Franchises and Formulas	19
5.11	Enforcement in Borrower's Country	19
Article 6.	INFORMATION COVENANTS	20
6.1	Financial Statements	20
6.2	[Officers' Certificates]	20

6.3	[Management Reports.].....	21
6.4	[Reports to Securities Exchange, Shareholders.].....	21
6.5	[Environmental Matters.].....	21
6.6	[Litigation.].....	21
6.7	[Default.].....	21
6.8	[Governmental Reports and Filings.].....	21
6.9	Other Information.	21
Article 7.	AFFIRMATIVE COVENANTS.....	22
7.1	Use of Loans.	22
7.2	Corporate Existence.	22
7.3	Compliance with Laws.	22
7.4	Taxes.	22
7.5	Maintenance of Properties.	22
7.6	Insurance.	22
7.7	[Performance of Contracts.].....	23
7.8	[Transactions with Affiliates.].....	23
7.9	[Maintenance of Books of Record and Accounts.].....	23
7.10	Inspection and Visitation.	23
7.11	[Fiscal Year End.].....	23
7.12	Payment Obligations <i>Pari Passu</i>	23
7.13	Further Assurances.....	23
Article 8.	NEGATIVE COVENANTS	25
8.1	Conduct of Business.	25
8.2	Equity of Subsidiaries.....	26
8.3	Mergers, Consolidations.	26
8.4	Sale of Assets, Etc.....	26
8.5	Liquidation, Etc.....	26
8.6	Indebtedness.....	26
8.7	Liens.....	27
8.8	[Other Agreements.]	28
Article 9.	FINANCIAL COVENANTS.....	29
9.1	[Rating.]	29
9.2	[Consolidated Net Worth.].....	29
9.3	[Minimum Consolidated Tangible Net Worth.].....	29
9.4	[Current Ratio.].....	29
9.5	[Fixed Charge Ratio.].....	29
9.6	[Total Debt Coverage Ratio.].....	30
9.7	[Minimum Consolidated EBITDA.]	31
9.8	[Minimum Consolidated Working Capital.].....	31
Article 10.	EVENTS OF DEFAULT.....	32
10.1	Events of Default.	32
10.2	Remedies.....	35
Article 11.	THE AGENT.....	36
11.1	Appointment.	36
11.2	Delegation of Duties.	36
11.3	Exclusion of Liability.	36

11.4	No Obligation to Monitor.	36
11.5	Reliance.....	37
11.6	Default; Event of Default.....	37
11.7	Agent in its Individual Capacity.	38
11.8	Indemnification.	38
11.9	Successor Agent.....	38
Article 12.	MISCELLANEOUS.	40
12.1	Notices.	40
12.2	Amendments or Waiver.	40
12.3	Indulgence Not a Waiver; Remedies Cumulative.....	41
12.4	Survival of Representations and Warranties.....	41
12.5	Expenses.	41
12.6	Indemnity.	42
12.7	Right of Setoff.....	43
12.8	Benefit of Agreement; Assignment.	43
12.9	Governing Law; Jurisdiction.....	45
12.10	Obligation to Make Payments in Yen.....	46
12.11	Confidentiality.	46
12.12	Use of English Language.	47
12.13	Execution in Counterparts.....	47
12.14	Effectiveness.	47

TABLE OF CONTENTS, cont'd.

SCHEDULE I	Lenders' Commitments
SCHEDULE II	Repayment Schedule
SCHEDULE III	Applicable Margin ¹
Exhibit A	Definitions and Interpretation
Exhibit B	Form of Drawdown Notice
Exhibit C	Form of Opinion of Counsel for the Borrower
Exhibit D	Form of Officers' Certificate of Borrower
Exhibit E	Form of Assignment and Acceptance

¹ Other schedules may be added based on exceptions to representations and warranties included in the Loan Agreement.

NOTE: NO REPRESENTATION OR WARRANTY IS MADE, AND NO RESPONSIBILITY IS UNDERTAKEN, AS TO THE SUITABILITY, EFFECTIVENESS, ADEQUACY OR COMPLETENESS OF, OR STANDARDS REFLECTED IN, THIS FORM OF YEN LOAN FACILITY AGREEMENT. THE USER IS ADVISED TO OBTAIN THE SERVICES AND ADVICE OF LEGAL COUNSEL AND OTHER ADVISERS IN USING THIS FORM OF YEN LOAN FACILITY AGREEMENT AND PREPARING ANY DEFINITIVE AGREEMENT FOR A LOAN TRANSACTION.

YEN LOAN FACILITY AGREEMENT²

Parties:

This Loan Facility Agreement is dated [INSERT DATE], and entered into by and among:

- (1) [INSERT NAME OF BORROWER], a company organized and existing under the laws of [INSERT NAME OF BORROWER'S COUNTRY] (the “**Borrower**”);
- (2) the banks and financial institutions that are signatories hereto (collectively the “**Lenders**” and each a “**Lender**”);
- (3) [INSERT NAME OF AGENT], acting as the agent for and on behalf of the Lenders in the manner and to the extent described in Article 11 (*The Agent*) (together with any successor agent appointed pursuant to Article 11.9 (*Successor Agent*), the “**Agent**”).

Recitals:

- (A) The Borrower requests that the Lenders extend the Yen loan facility described in this Agreement.
- (B) The Lenders are willing to make available to the Borrower Yen loans in accordance with and subject to the terms and conditions of this Agreement.

² Instructions for Form Loan Agreement:

- Language included [within square brackets and under-scored] indicates that one of various alternatives within the brackets must be selected in completing the form.
- Language included [within square brackets and NOT under-scored] indicates that the language is optional and may, or may not, be included in completing the form, depending upon the nature of the transaction.
- Certain optional provisions are also footnoted at relevant places in the document instead of being included in [square brackets] in the text of the agreement, as a matter of convenience for the reader.
- Language in [SMALL CAPS] included within square brackets indicates that the information described in SMALL CAPS should be added to the agreement and the square brackets removed.

Definitions:

Capitalized terms are used in this Agreement with the meanings provided to them in Exhibit A.

Article 1. MAKING OF AND TERMS OF LOANS

1.1 Loans.

- (a) Each Lender severally agrees to make [a loan to the Borrower] [loans to the Borrower from time to time]³ during the Availability Period subject to and in accordance with the terms and conditions in this Agreement. (Any such loan or loans made to the Borrower by any Lender or all the Lenders, as the context may require, herein called the “*Loans*” and each, a “*Loan*”.)
- (b) The aggregate principal amount of any and all Loans outstanding at any time from any Lender shall not exceed the Commitment of such Lender at such time.
- (c) The Borrower shall make all Drawdowns of Loans under this Agreement *pro rata* from the Lenders on the basis of their respective Commitments. No Lender shall be responsible for any default by any other Lender of its obligation to make its Loans requested hereunder, and no Lender’s Commitment shall be increased or decreased as result of any such default.
- (d) The Commitments are not revolving and no amounts repaid or prepaid or cancelled under his Agreement may be reborrowed or reinstated hereunder.
- (e) Each Lender’s Commitment shall expire automatically and without notice on the last day of the Availability Period.

1.2 Fees.

- (a) The Borrower agrees to pay to the Agent, for the ratable benefit and account of each of the Lenders, a commitment fee based on the daily Total Undrawn Commitment at the rate per annum of [INSERT RATE IN WORDS] percent ([INSERT RATE IN NUMBERS]%), such commitment charge to accrue during the Availability Period (the “*Commitment Fee*”). The Commitment Fee shall be payable in arrears on each Interest Payment Date during the Availability Period and on the last day of the Availability Period if such day does not occur on an Interest Payment Date.
- (b) The Borrower shall pay to the Agent, for its own account, the fees described in the fee letter relating to this Agreement entered into between the Borrower and the Agent, and such fees shall be deemed to be incurred under this Agreement.

³ Use the first [bracketed underlined language] if the Borrower will make only a single Drawdown of Loans. Use the second [bracketed underlined language] if the Borrower may make more than one Drawdown of Loans. In either case, the Drawdown(s) must be made within the specified Availability Period.

1.3 Drawdown Notice.

- (a) The Borrower may request a Drawdown hereunder (a “*Proposed Drawdown*”) by providing the Agent a notice (each a “*Drawdown Notice*”) in the form of Exhibit B duly completed.
- (b) The Borrower shall deliver the Drawdown Notice to the Agent at least [INSERT NUMBER] Business Days prior to the date of the Proposed Drawdown (which shall be a Business Day). Any Drawdown Notice received after [INSERT TIME] a.m. (Tokyo time) on a Business Day or at any time on a day that is not a Business Day shall be deemed to have been received on the following Business Day.
- (c) The Agent shall promptly give each Lender notice of each Drawdown Notice and of such Lender’s proportionate share of the amount of the Proposed Drawdown.
- (d) The principal amount of each Drawdown hereunder shall be JPY [INSERT AMOUNT IN NUMBERS] or, if larger, a whole multiple of JPY [INSERT AMOUNT IN NUMBERS].

1.4 Disbursement by Lenders.

- (a) Subject to the terms and conditions of this Agreement, each Lender will make available, through its applicable lending office, its pro rata portion of the Proposed Drawdown requested by the Borrower in a Drawdown Notice in immediately available funds in Yen to the Agent’s Account at the Agent’s Payment Office by no later than [INSERT TIME] a.m. (Tokyo time) on the date specified for such Proposed Drawdown in such Drawdown Notice. The Agent will, on such date, make available to the Borrower, by crediting to the Borrower’s account at the Agent’s Payment Office, the aggregate of the amounts so made available to the Agent by the Lenders.
- (b) (i) Unless a Lender notifies the Agent in writing prior to the date of the Proposed Drawdown specified in a Drawdown Notice that such Lender does not intend to make available to the Agent its portion of the Drawdown to be made on such date, the Agent may assume that such Lender has made its portion of the Drawdown available to the Agent on such date, and the Agent may, in reliance upon such assumption and at its sole discretion, make available to the Borrower from the Agent’s funds the corresponding amount of such Lender’s portion of the Drawdown. In such an event, if such corresponding amount was not made available by a Lender to the Agent at or before the required time on the date of such Proposed Drawdown, the Lender shall pay to the Agent, on demand, the full principal amount of such Lender’s portion of the Drawdown together with interest thereon, at a rate determined by the Agent acting reasonably, for the period from (and including) the date of such advance to but excluding the date such Lender makes such amount immediately available to the Agent. The Agent may also recover any or all of such corresponding amount from the Borrower, and the Borrower shall, on demand by the Agent, immediately pay

such corresponding amount to the Agent together with interest thereon at the then Applicable Interest Rate from (and including) the date such amount was made available by the Agent to the Borrower to but excluding the date that the Borrower makes such amount immediately available to the Agent.

- (ii) A notice from the Agent delivered to a Lender or the Borrower, as relevant, regarding any amounts owing under this Article 1.4(b) (*Disbursement by Lenders*) shall, absent manifest error, be final and conclusive and binding on the Lender or the Borrower, as relevant.
- (iii) Nothing in this Article 1.4(b) (*Disbursement by Lenders*) shall be deemed to relieve any Lender from its obligation to make Loans hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any failure by a Lender to make Loans hereunder.

1.5 Scheduled Interest.

The Borrower shall pay interest on the unpaid principal amount of each Loan from the date the proceeds thereof are made available to the Borrower until such principal amount is paid in full at a rate per annum which, during each Interest Period applicable thereto, shall be the Applicable Interest Rate for such Interest Period. Accrued and unpaid interest shall be payable on each Interest Payment Date and upon any prepayment (to the extent accrued on the principal amount prepaid) and at maturity (whether by acceleration or otherwise).

1.6 Overdue Amounts and Overdue Interest.

If any principal amount of a Loan or any interest thereon, or any other amount payable under this Agreement or other Financing Agreement is not paid when due (whether at the stated maturity, pursuant to a voluntary or mandatory prepayment, by acceleration or otherwise), such overdue amount shall bear interest (in the case of interest that is overdue, to the extent permitted by law) at a rate per annum equal to the Overdue Rate from and including the date of such non-payment to but excluding the date on which such payment is paid in full (after as well as before any judgment). The payment of overdue interest by the Borrower in accordance with this Article 1.6 (*Overdue Amounts and Overdue Interest*) shall not prejudice the right of the Agent or any Lender to exercise any other of its rights, remedies or claims hereunder or any applicable law to remedy any failure by the Borrower to pay any amount on the due date for payment hereunder, and in particular its rights under Article 10 (*Events of Default*).

1.7 Break Funding Costs.

In the event that:

- (a) any Drawdown of any Lender's Loan does not occur on the date specified therefor in the relevant Drawdown Notice (other than due to a default of that Lender);

- (b) any Lender's Loan is repaid, prepaid or setoff (whether by reason of voluntary prepayment, mandatory prepayment, acceleration of the maturity of such Loan or for any other reason (including under Article 3.1 (*Increased Costs; Capital Adequacy*) or Article 3.3 (*Illegality or Impracticality of Loans*)) on a date other than the last day of an Interest Period applicable to that Loan;
- (c) any prepayment of any amount of a Lender's Loan is not made on the date specified in the relevant notice of prepayment given by the Borrower; or
- (d) the Borrower defaults in the payment when due of the principal of or interest on any Lender's Loan;

then,

- (aa) the affected Lender shall notify the Agent of such event (each, a "**Breakage Event**"), stating the principal amount of the failed Loan Drawdown (in the case of clause (a) above), the principal amount repaid, prepaid or set off (in the case of clause (b) above), the principal amount of any prepayment not made when specified (in the case of clause (c) above), or the full amount of any principal or interest payment not made when due (in the case of clause (d) above) (any of the foregoing amounts, the relevant "**Breakage Amount**");
- (bb) the Agent shall notify the Borrower and such Lender of (i) the applicable Reinvestment Rate and (ii) the amount of the applicable Breakage Payment; and
- (cc) the Borrower shall upon receipt of such notice from the Agent pay the full amount of the applicable Breakage Payment to such Lender.

For purposes of this Agreement,

- (x) the "**Breakage Payment**" applicable to any Breakage Event shall be equal to the notional amount of interest that would accrue during the Remaining Period on a principal amount equal to the relevant Breakage Amount at an interest rate per annum equal to the positive difference, if any, of (i) the [Euro Yen TIBOR / Yen TIBOR / Yen LIBOR] for the Interest Period during which the Breakage Event occurred less (ii) the Reinvestment Rate, calculated on the basis of a year of [360] [365] days;
- (y) the "**Remaining Period**" means the period commencing on and including the day on which the relevant Breakage Event occurred and ending on but excluding the Interest Payment Date immediately following the date of such Breakage Event; and
- (z) the "**Reinvestment Rate**" means the rate determined by such Lender as being the rate of return on a potential reinvestment of the Breakage Amount during the Remaining Period.

[Remainder of this page intentionally left blank.]

Article 2. PAYMENTS AND REPAYMENTS

2.1 Repayments.

On each Maturity Date, the Borrower shall repay the amount of outstanding principal of the Loans corresponding to such Maturity Date as set forth in Schedule II attached hereto.

2.2 Prepayments.⁴

The Borrower may, at its option and at any time and from time to time, prepay any Loans, in whole or in part, upon at least [INSERT NUMBER] Business Days' prior written notice to the Agent of such request and of the amount of the requested prepayment (which notice the Agent shall promptly transmit to each of the Lenders) and on the following terms and conditions:

- (a) each prepayment (other than any prepayment pursuant to Article 3.1(g) (*Increased Costs; Capital Adequacy*)) shall be in an aggregate principal amount of at least JPY [INSERT AMOUNT] [or a whole multiple thereof];
- (b) [each such prepayment may be made without premium or penalty] [with each prepayment (other than any prepayment pursuant to Article 3.1(g) (*Increased Costs; Capital Adequacy*)), the Borrower shall pay a prepayment premium of [INSERT PREPAYMENT PREMIUM AMOUNT IN WORDS] percent ([INSERT PREPAYMENT PREMIUM AMOUNT IN NUMBERS]%) of the principal to be prepaid, which premium shall be paid simultaneously with such prepayment];
- (c) the Borrower shall pay all interest accrued on the amount to be prepaid up to but excluding the date of such prepayment and all other amounts payable hereunder (including pursuant to Article 1.7 (*Break Funding Costs*)) in respect such prepayment; and
- (d) each prepayment shall be applied *pro rata* among each Lender.

2.3 Mandatory Prepayments.

- (a) The Borrower shall prepay any amount by which the aggregate outstanding principal amount of Loans at any time exceeds the Total Commitment then in effect at such time.

⁴ If Agent and/or Lender consent to optional prepayments will be required, replace the first paragraph of Article 2.2 (*Prepayments*) with the following text:

[The Borrower may, at any time and from time to time, request to prepay any Loans, in whole or in part, by giving the Agent at least [INSERT NUMBER] Business Days' prior written notice of such request and of the amount of the requested prepayment, which notice the Agent shall promptly transmit to each of the Lenders. If [the Agent and] [each of the Lenders] [the Required Lenders] give their prior written consent to such prepayment (which consent shall not be unreasonably withheld), the Borrower may make such prepayment on the following terms and conditions:]

- (b) [INSERT ANY OTHER CIRCUMSTANCES OR SOURCES OF MANDATORY PREPAYMENTS SUCH AS EXCESS CASH, CASH PROCEEDS FROM THE SALE OF ASSETS OR OTHER EVENTS OR AMOUNTS RELEVANT TO BORROWER AND DESIRED FOR PREPAYMENT.]

2.4 Procedure for Payment by Borrower.

- (a) Except as otherwise stated herein or any other Financing Agreement, the Borrower shall make all payments (including prepayments) of principal, interest and other amounts under this Agreement to the Agent for the account of each Lender, the Lenders or the Agent, as relevant.
- (b) The Borrower shall make each such payment by not later than [INSERT TIME] a.m. (Tokyo time) on each due date in Yen in immediately available funds to the Agent's Account at the Agent's Payment Office. If the Agent receives any such payment after [INSERT TIME] a.m. (Tokyo time) on any Business Day, such payment shall be deemed to have been received on the following Business Day.
- (c) If any payment to be made hereunder is stated to be due on a day that is not a Business Day, the due date shall be extended until, and the Borrower shall make such payment on, the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case it shall be the immediately preceding Business Day, and in the case of payments of principal, interest shall be payable at the Applicable Interest Rate during any such extension.

2.5 Allocation of Payments.

- (a) If the Agent receives or recovers an amount from the Borrower in connection with any Financing Agreement which is insufficient to discharge all of the Obligations then due and payable by the Borrower under the Financing Agreements, then such amount shall be applied by the Agent towards the Obligations in the following order:
 - (i) first, in or towards payment *pro rata* of any costs, charges, losses, liabilities and/or expenses incurred by the Agent and/or any receiver(s) in connection with the exercise or enforcement of any rights and/or remedies under any Finance Agreement giving rise to the receipt or recovery of such amount;
 - (ii) second, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent and the Lenders under the Finance Agreements;
 - (iii) third, in or towards payment *pro rata* of any interest on overdue interest owed to the Lenders;
 - (iv) fourth, in or towards payment *pro rata* of any accrued interest owed to the Lenders under this Agreement;

- (v) fifth, in or towards payment, in the inverse order of maturity, *pro rata* of any principal owed to the Lenders under this Agreement; and
 - (vi) sixth, in or towards payment *pro rata* of any other sum owed under the Finance Agreements to the Agent and the Lenders under such agreements.
- (b) [Notwithstanding the provisions of Article 2.5(a) (*Allocation of Payments*), if all or any part of the Obligations have become immediately due and payable pursuant to Article 10 (*Events of Default*), the Agent shall, after deducting the amounts described in Articles 2.5(a)(i) and 2.5(a)(ii) from the amount paid by the Borrower, distribute the remaining amount to each Lender in proportion to the amount of the Obligations owed to such Lender in the order and method that such Lender shall determine.]

2.6 Sharing of Payments.

- (a) In the event a Lender (the “**Recipient Lender**”) receives or recovers any amount (the “**Relevant Amount**”) (whether by exercise of a right of setoff or banker’s lien or similar right, voluntary payment, counterclaim or cross-action or otherwise) in respect of any Obligation that is in excess of its *pro rata* share of such Obligation (including as determined by the order of application of payments under Article 2.5(a) (*Allocation of Payments*), then the Recipient Lender shall purchase for cash from each of the other Lenders or holders of such Obligation (and such other Lenders and holders shall sell) such participations in such other Lender’s or holder’s *pro rata* share of such Obligation as shall be necessary to cause the Recipient Lender to share the Relevant Amount with each other Lender or each such holder in accordance with their respective *pro rata* shares of such Obligation (including in compliance with the order of application of payments under Article 2.5(a) (*Allocation of Payments*)). Notwithstanding the foregoing, if all or any portion of the Relevant Amount is thereafter recovered from the Recipient Lender, then any purchase of participations by the Recipient Lender shall be rescinded and the purchase prices restored without interest.
- (b) Any Lender (a “**Participating Lender**”) purchasing a participation in the Obligations held by other Lenders or holders of Obligations may exercise all rights of offset or bankers’ lien or similar rights in with respect to the amount of such participation as fully as if the Participating Lender were the direct Lender holding or the direct holder of its participating amount of such Obligations.

2.7 Loan Account and Accounting.

The Agent shall maintain a loan account on its books to record the Loans, all payments made by the Borrower, and all other debits and credits as provided in this Agreement with respect to the Loans and any other Obligations. The balance in such loan account, as recorded on the Agent’s most recent printout or other written statement, shall, absent manifest error, be presumptive evidence of the amounts due and owing to the Agent and the Lenders by the Borrower; *provided* that any failure to

so record or any error in so recording shall not limit or otherwise affect the Borrower's duty to pay any amount in relation to the Obligations.

2.8 Basis of Calculations.

Any interest, or any Fee or other amount that is calculated on the basis of an interest rate, under this Agreement or any other Financing Agreement shall be calculated on the basis of a year of [360/365] days for the actual number of days (including the first day but excluding the last day) elapsed during the relevant period for which such interest or Fee is being calculated. If the result of any such calculation includes a fractional amount of one (1) Yen, then such fractional amount shall be rounded down to the nearest whole Yen.

[Remainder of this page intentionally left blank.]

Article 3. INCREASED COSTS; ILLEGALITY; TAXES

3.1 Increased Costs, Capital Adequacy.

If any Lender shall determine that:

- (a) any introduction of or change in or change in the interpretation of any law, treaty or governmental regulation, rule, guideline, order or determination (including those related to capital adequacy or official reserve requirements, or to the basis of taxation of any payments made under this Agreement to such Lender or its applicable lending office for Loans (except for taxation of the net income or profits of such Lender or its applicable lending office imposed by the jurisdiction in which its principal office or applicable lending office for Loans is located)), in each case that is effective after the date of this Agreement; or
- (b) any compliance by it with any guideline, request or directive issued by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law); or
- (c) other circumstances affecting such Lender or the applicable interbank market or the position of such Lender in such market;

has the effect of

- (d) increasing the cost to such Lender to maintain the amount of capital required or expected to be maintained by such Lender based on the existence of such Lender's Commitment or Loans hereunder or its obligations hereunder, or
- (e) subjecting such Lender to increased costs for agreeing to make, funding or making available or maintaining any Loans or a reduction in any amount received or receivable by it hereunder,

then

- (f) such Lender shall so notify the Borrower (with a copy simultaneously to the Agent), stating the basis (with reasonable detail) for the calculation of the additional amounts owed to such Lender (which calculation shall, absent manifest error, be final and conclusive and binding on all the parties hereto), and
- (g) upon receipt of such notice, the Borrower shall either
 - (i) pay to such Lender such additional amounts (in the form of an increased rate of, or a different method of calculating interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for such increased costs (including increased cost to such Lender as a result of such increase of capital) and or reductions in amounts received or receivable hereunder; or

- (ii) notify the Lender (which notice shall be irrevocable) that it will prepay, and promptly prepay, without premium or penalty⁵ the Loans and other Obligations owed to such Lender in full or in any lesser amount sufficient to eliminate, from and after the date of such prepayment, the circumstances giving rise to any demand by such Lender under this Article 3.1 (*Increased Costs; Capital Adequacy*).

3.2 Market Interruption.

If the Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto) prior to the first day of any Interest Period in relation to any Loan or the date of any Proposed Drawdown that, by reason of circumstances affecting the relevant interbank market, adequate and fair means do not exist for ascertaining the Applicable Interest Rate for such Loan or the Proposed Drawdown, as relevant, on the basis provided for in the definition of [Yen LIBOR/Euro Yen TIBOR/Yen TIBOR], then the Agent shall on such date give notice (by facsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon (i) Drawdowns shall no longer be made until such time as the Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice by the Agent no longer exist, and any Drawdown Notices given by the Borrower which have not yet been incurred shall be deemed rescinded by the Borrower and (ii) the rate of interest applicable to any Loans to which such circumstances relate and that were to be continued at the Applicable Interest Rate shall be equal to such rate per annum as the Agent shall determine for each day during such Interest Period relating thereto until such time as the Agent shall have notified the Borrower and the Lenders that the circumstances giving rise to such notice by the Agent no longer exist.

3.3 Illegality or Impracticability of Loans.

- (a) If on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining or continuation of any of its Loans (i) conflicts with, or has become unlawful or impossible as a result of compliance by such Lender in good faith with any law, treaty or governmental rule, regulation, guideline, order, request or determination, or (ii) impractical as a result of any contingency occurring after the date of this Agreement which materially and adversely affects the relevant interbank market or the position of such Lender in that market, then, and in any such event, then such Lender shall give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and the Agent of such determination (which notice Agent shall promptly transmit to each other Lender).
- (b) Immediately upon the giving of any such notice and thereafter, such Lender's Commitments shall be terminated and the Borrower shall, if so required by such Lender, on the next Interest Payment Date or on such earlier date as such Lender may certify as being necessary in order to comply with the relevant

⁵ Prepayments under Article 3.1(g)(ii) (*Increased Costs; Capital Adequacy*) are free of any applicable premium or penalties that may be provided for under Article 2.2(b) (*Prepayments*).

law or requirement, prepay any Loans outstanding from such Lender in full (without any prepayment premiums) and all accrued interest thereon.

3.4 Payments Made Free and Clear.

- (a) All payments made by the Borrower hereunder will be made without setoff, counterclaim or other defense.
- (b) All amounts payable by the Borrower under this Agreement and the other Financing Agreements shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding for, any present or future income, stamp or other taxes, levies, imposts, duties, fees, assessments, deductions or other charges of whatever nature and interest, penalties or similar liabilities with respect thereto (collectively, “*Taxes*”) imposed, levied, collected, withheld or assessed by or within any jurisdiction or political subdivision thereof (including Japan or the Borrower’s country or any other jurisdiction from or to which a payment is made or deemed made by or on behalf of the Borrower).

3.5 Gross-Up for Taxes.

- (a) If the Borrower or any other Person is required by law to make any deduction or withholding on account of any Taxes from any amount paid or payable by the Borrower to the Agent or any Lender under any of the Financing Agreements:
 - (i) the Borrower shall notify the Agent of any such requirement or any change in any such requirement as soon as the Borrower becomes aware of it;
 - (ii) the Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on the Borrower) for its own account or (if that liability is imposed on the Agent or such Lender, as the case may be) on behalf of and in the name of the Agent or such Lender;
 - (iii) the amount payable by the Borrower in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including any deduction, withholding or payment on amounts paid pursuant to this Article 3.5 (*Gross-Up for Taxes*)), the Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no deduction, withholding or payment been required or made, provided that this clause (iii) shall not apply in respect of any such deduction, withholding or payment for tax on the overall net income of the Agent or any Lender; and
 - (iv) the Borrower will furnish to the Agent within [30] days after the date on which the payment of any Taxes is due pursuant to applicable law

certified copies of tax receipts evidencing such payment by the Borrower.

- (b) The Borrower agrees to indemnify and hold harmless the Agent and each Lender, and reimburse such party upon its written request, for the amount of any Taxes (excluding any tax on the overall net income of such party) levied or imposed and paid by such party in relation to any amounts payable under this Agreement and the other Financing Agreements.

[Remainder of this page intentionally left blank.]

Article 4. CONDITIONS PRECEDENT.

4.1 Conditions Precedent to the Initial Drawdown.

The obligation of each Lender to make a Loan requested to be made by it on the Initial Drawdown Date shall be subject to the satisfaction of each of the conditions set forth below in this Article 4.1 (*Conditions Precedent to the Initial Drawdown*) in form and substance satisfactory to each of the Lenders.

- (a) Each of the Financing Agreements shall have been duly executed by all of the parties thereto, the complete signed originals of each of the Financing Agreements shall have been delivered to the Agent, and true and complete conformed copies thereof shall have been delivered to each of the Lenders.
- (b) All governmental approvals, authorizations and filings and third party consents and approvals required for the effectiveness of the Financing Agreements and for the performance by the Borrower of each of the Financing Agreements shall have been duly issued or given by the appropriate Persons[, the Borrower shall have delivered to the Agent and each Lender true and complete copies thereof,] and any restriction, condition or waiting period contained therein shall be acceptable to the Lenders.
- (c) The Borrower shall have delivered to the Agent and each Lender all of the following documents:
 - (i) [an] executed legal opinion[s] from [INSERT NAME(S) OF JAPANESE AND/OR BORROWER'S COUNTRY'S COUNSEL] as special counsel to the Borrower addressed to the Agent and each of the Lenders, dated the Initial Drawdown Date and covering the matters set forth in Exhibit C and such other matters incident to the transactions contemplated herein as any Lender may reasonably request;
 - (ii) a certificate, dated the Initial Drawdown Date, signed by an executive officer of the Borrower and attested to by the Secretary of the Borrower (or any officer undertaking the equivalent function in the Borrower's jurisdiction), in the form of Exhibit D with appropriate insertions, together with copies of the [INSERT REFERENCE TO THE ORGANIZATIONAL AND CONSTITUTIONAL DOCUMENTS OF THE BORROWER] and the resolutions of the Borrower referred to in such certificate;
 - (iii) [such financial information, business and other information in relation to the Borrower and its Subsidiaries as the [Required Lenders/the Agent/any Lender] may have [reasonably] requested];
 - (iv) [an environmental report from [INSERT ENVIRONMENTAL CONSULTING FIRM] together with any information reasonably requested by [Required Lenders/the Agent/any Lender] all environmental laws have been complied with];

- (v) [evidence of insurance with reputable insurance companies in such amounts and covering such risks as [Required Lenders/the Agent/any Lender] may have [reasonably] requested]; and
 - (vi) evidence that all required stamp duties, registration fees, filing costs, and other fees, charges and costs then due and payable by the Borrower and/or its Subsidiaries in connection with the execution, delivery, filing and/or perfection of any Financing Agreement executed or in existence as of the Initial Drawdown Date has been paid in full.
- (d) All invoices, fees, costs and expenses due to the Agent and each Lender under the Financing Agreements on or before the Initial Drawdown Date shall have been paid or shall be paid out of the proceeds of the initial Drawdown.

4.2 Conditions Precedent to Each Drawdown.

The obligation of each Lender to make any Loan requested to be made by it on any date (including on the Initial Drawdown Date) shall at all times be subject to the satisfaction of each of the conditions set forth below in this Article 4.2 (*Conditions Precedent to Each Drawdown*), each in form and substance satisfactory to each of the Lenders:

- (a) at the time of the making of such Loan and also after giving effect thereto, no Default or Event of Default shall have occurred and be continuing;
- (b) at the time of the making of such Loan and also after giving effect thereto, all representations and warranties in this Agreement and the other Financing Agreements shall be true and correct [in all material respects] with the same effect as though such representation and warranties had been made on and as of such date[, provided that for purposes of this Article 4.2(b), any qualification of a representation and warranty as to materiality shall be disregarded]⁶;
- (c) no order, decree, notice or judgment of any court or governmental agency or instrumentality shall have enjoined or restricted any Lender from making a Loan hereunder;
- (d) after giving effect to such Loan, the aggregate outstanding principal amount of the Loans would not exceed the Total Commitments; and
- (e) the Agent shall have received a Drawdown Notice with respect thereto meeting the requirements of Article 1.3 (*Drawdown Notice*).

[Remainder of this page left intentionally blank.]

⁶ If the first bracketed language will be used in any case where any representation and warranty is already subject to a materiality standard, the second bracketed phrase should also be added to avoid any issues with a “double materiality” standard for such representations and warranties under this condition precedent.

Article 5. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lenders to enter into this Agreement and to make the Loans, the Borrower makes the following representations and warranties as of the date hereof and as of the date of each Drawdown, which shall survive the execution and delivery of this Agreement and the date of each Drawdown.⁷

5.1 Corporate Status; Power and Authority.

- (a) Each of the Borrower and its Subsidiaries (i) is a duly organized, validly existing [INSERT TYPE OF ENTITY] [in good standing] under the laws of the jurisdiction of its formation, (ii) is duly qualified [and in good standing] as a foreign corporation or company in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed, and (iii) has the power and authority to own its property and assets and to transact the business in which it is engaged.
- (b) The Borrower has the power and authority to enter into and carry out its obligations under the Financing Agreements, and the Borrower has taken all necessary action on its part required to be taken in order to authorize the execution, delivery, consummation and performance of the Financing Agreements. The Borrower has duly executed and delivered each of the Financing Agreements.
- (c) The execution and delivery by the Borrower of the Financing Agreements, the consummation of the transactions contemplated therein and the performance by it of its obligations thereunder will not (i) cause the Borrower to violate any

⁷ Additional representations and warranties may be added based on the Borrower's business and on specific risks relating to the Borrower's Country. For example:

[5.____] [Capitalization.]

[On the date hereof, the authorized capital stock of the Borrower consists of (i) _____ shares of common stock, [JPY][_____] par value per share, of which _____ shares are issued and outstanding and (ii) [descriptions of other capital stock of Borrower]. All such outstanding shares have been duly and validly issued and are fully paid and non-assessable. The Borrower does not have outstanding any securities convertible into or exchangeable for its capital stock or outstanding any rights to subscribe for or to purchase, or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock.]

[5.____] [Subsidiaries.]

On the date hereof, the corporations listed in Schedule [____] are the only Subsidiaries of the Borrower. Schedule [____] correctly sets forth, as of the date hereof, the percentage ownership (direct and indirect) of the Borrower in each class of capital stock of each of its Subsidiaries and also identifies the direct owners thereof.]

[5.____] [Transactions with Affiliates.]

[Except as set forth in Schedule [____] attached hereto], the Borrower has not engaged or agreed to engage in any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of the Borrower other than on terms and conditions substantially as favorable to the Borrower or such Subsidiary (as relevant) as would be obtainable by the Borrower or such Subsidiary (as relevant) at the time in a comparable arm's-length transaction with a Person other than an Affiliate.]

provision of its charter, bylaws or any other constituent documents, (ii) cause the Borrower to violate any law, rule or regulation applicable to it, (iii) cause the Borrower to violate any order, judgment or decree of any governmental body or authority which by its terms names and is applicable to the Borrower or its assets and which is known to the Borrower, (iv) constitute a breach of, constitute a default under or require any payment under any contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument binding on or affecting it, its Subsidiaries or any of its or their properties, or (v) result in or require the creation or imposition of any Lien upon any of the properties of it or any of its Subsidiaries. Each of the Financing Agreements constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

5.2 Governmental Consents and Actions.

All authorizations, licenses, approvals or consents of, or registrations, recordations or filings with, or exemptions by, the Borrower's Country and Japan, or of any subdivision, agency, department, or commission thereof or therein that is reasonably necessary or advisable for (a) the execution, delivery or performance of the Financing Agreements and any agreement or instrument required thereunder, (b) the legality, validity, enforceability and admissibility in evidence thereof, (c) the borrowings under the Agreement or (d) the payment by the Borrower of all sums which it may be liable to pay under the Financing Agreements and any agreement or instrument required hereunder or thereunder, have been duly effected, completed and/or obtained and are in full force and effect.

5.3 Financial Statements; Financial Condition; Material Adverse Change; etc.

Each financial statement delivered by the Borrower or any of its Subsidiaries (as the case may be) to the Lenders has been prepared in accordance with GAAP, consistently applied, and presents fairly, as modified by the notes thereto, the financial condition of such Person as of the applicable date and the results of the operations of such Person during the periods ending on such dates. Since [INSERT DATE], there has been no Material Adverse Change.

5.4 Litigation.

[Except as listed in Schedule 5.4 attached hereto,] there is no action, suit or proceeding at law or in equity, or by or before any governmental or regulatory body or agency or any arbitration board or panel, pending or threatened against the Borrower or any of its Subsidiaries (i) with respect to any Financing Agreement or (ii) that is reasonably likely to cause a Material Adverse Change.

5.5 True and Complete Disclosure.

All factual information heretofore or contemporaneously furnished by or on behalf of the Borrower or any of its Subsidiaries in writing to any Lender (including all information contained in the Financing Agreements) for purposes of or in connection with this Agreement or any transaction contemplated herein is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of the Borrower or any of its Subsidiaries in writing to any Lender will be, true and accurate

in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading at such time in light of the circumstances under which such information was provided.

5.6 Payment Obligations *Pari Passu*.

The obligations and liabilities of the Borrower under this Agreement and the Financing Agreements are unconditional and general obligations of the Borrower and rank at least *pari passu* with all other present or future unsecured and unsubordinated Indebtedness of the Borrower.

5.7 Tax Returns and Payments.

The Borrower and each of its Subsidiaries has filed all tax returns required to be filed by it and has paid all income taxes payable by it which have become due pursuant to such tax returns and all other taxes and assessments payable by it which have become due, other than those not yet delinquent and those contested in good faith and for which adequate reserves have been established. The Borrower and each of its Subsidiaries has paid, or has provided adequate reserves (in the good faith judgment of the management of the Borrower) for the payment of, all national and local income taxes applicable for all prior fiscal years and for the current fiscal year to the date hereof.

5.8 Compliance with Law.

The Borrower and each of its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all relevant governmental authorities, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls).⁸

5.9 Immunity.

The Borrower is a legal entity with separate legal personality capable of being sued in its own name. It is subject to civil and commercial law with respect to its obligations under the Financing Agreements. The execution and delivery of the Financing Agreements constitute, and the Borrower's performance of and compliance with its obligations under the Financing Agreements will constitute, private and commercial acts rather than public or governmental acts. Neither the Borrower nor any of its Assets has any right of immunity from suit, execution, attachment prior to judgment, attachment in aid of execution or any other legal process with respect to its obligations under the Financing Agreements in any jurisdiction, including the Borrower's Country, except for immunities of Assets attached to public concessions, which execution or attachment of such Assets is subject to legal restrictions.

⁸ Revisions made to this provision should be mirrored in the covenant in Article 7.3 (*Compliance with Laws*).

5.10 Patents, Licenses, Franchises and Formulas.

The Borrower and each of its Subsidiaries owns all the patents, trademarks, permits, service marks, trade names, copyrights, licenses, franchises, know-how and formulas, or rights with respect to the foregoing, and has obtained assignments of all leases and other rights of whatever nature, necessary for the present conduct of its business. None of the Borrower or any of its Subsidiaries has infringed on the intellectual property rights of any Person or received any notice or complaint from any Person with respect thereto.

5.11 Enforcement in Borrower's Country.

In any proceedings in the Borrower's Country to enforce any Financing Agreement, the choice of Japan law as the governing law hereof and thereof will be recognized and such law will be applied. The consent by the Borrower in Article 12.9 (*Governing Law; Jurisdiction*) of this Agreement to the jurisdiction of the Tokyo District Courts and the appointment by the Borrower of the agent for service of process in Tokyo pursuant to Article 12.9 (*Governing Law; Jurisdiction*) of this Agreement are legal, valid, binding and enforceable in the Borrower's Country, and any judgment obtained in Japan will be recognized and enforceable against the Borrower and its Assets in the Borrower's Country. Each of the Financing Agreements is in proper legal form under the laws of the Borrower's Country and is capable of enforcement in the courts of the Borrower's Country without further action on the part of the Agent or any Lender.

[Remainder of this page intentionally left blank.]

Article 6. INFORMATION COVENANTS.

Until such time that all of the Commitments have terminated and the Loans, together with interest, fees and all other Obligations incurred under this Agreement are paid in full, the Borrower agrees that it shall furnish to the Agent and each Lender:

6.1 Financial Statements.

Commencing with the financial statements to be produced for the period ending on [month, day and year], and in sufficient copies for the Agent and each Lender:

- (a) Borrower's Annual Audit Report. As soon as available and in any event [within [90] days after the close of each fiscal year of the Borrower] [on or before the date on which financial statements are required to be filed with [INSERT REFERENCE TO THE RELEVANT STOCK EXCHANGE]], a copy of the complete annual audit report, together with all notes thereto, containing a consolidated [and consolidating] balance sheet and statement of income, operations, stockholders equity and cash flows of the Borrower and its Subsidiaries as at the end of and for the period ending such fiscal year prepared in conformity with GAAP applied on a consistent basis, in each case providing comparative consolidated figures for the preceding fiscal year. Such financial statements shall be certified by an independent certified public accountants of recognized [international/national] standing reasonably acceptable to [the Required Lenders/all Lenders] as having been prepared in conformity with GAAP applied on a consistent basis.
- (b) Borrower's Unaudited Interim Financial Statements. As soon as available and in any event [within [60] days after the close of] [on or before the date on which financial statements are required to be filed with [INSERT REFERENCE TO THE RELEVANT STOCK EXCHANGE] in relation to] each quarter of each fiscal year of the Borrower, a copy of the unaudited consolidated [and consolidating] balance sheet and statement of income, operations, stockholders equity and cash flows of the Borrower and its Subsidiaries as at the end of, and for the period ending, such quarter and as at the end of, and for the period ending, the elapsed portion of the fiscal year ending the last date of such quarter, prepared in accordance with GAAP applied on a consistent basis and, in each case, providing comparative consolidated figures for the related periods in the preceding fiscal year. Such financial statements shall be certified by the chief financial officer of the Borrower as to fairly presenting the Borrower's consolidated financial position at the close of such period and the results of the Borrower's consolidated operations for such period, subject to normal year-end audit adjustments.

6.2 [Officers' Certificates.]

[At the time of the delivery of the financial statements referred to in Article 6.1 (*Financial Statements*), a certificate of the chief financial officer of the Borrower stating that a review of the Borrower's and its Subsidiaries' activities during the period related to such financial statements has been made under his/her supervision

and that, to the best of her/his knowledge, no Default or Event of Default has occurred and is continuing, or if its has occurred then describing the nature and details of such Default or Event of Default.]

6.3 [Management Reports.]

[Promptly upon the Borrower's receipt thereof, a copy of any final report, including any comment letter, from the independent certified public accountant in relation to any annual, interim or special audit of the Borrower or any of its Subsidiaries.]

6.4 [Reports to Securities Exchange, Shareholders.]

[Promptly upon the making thereof, a copy of each report made by the Borrower or any of its Subsidiaries to the [INSERT REFERENCE TO THE RELEVANT SECURITIES EXCHANGE AND THE SECURITIES COMMISSION] or to its respective shareholders.]

6.5 [Environmental Matters.]

[Promptly upon the Borrower obtaining knowledge thereof, a notice of any facts or circumstances that could result in an assertion of a claim related to an environmental matter against the Borrower or any of its Subsidiaries.]

6.6 [Litigation.]

[Promptly upon the Borrower obtaining knowledge thereof, a notice of any litigation or governmental proceeding pending against the Borrower or any of its Subsidiaries involving a claim in excess of JPY [INSERT AMOUNT] (or its equivalent in [INSERT REFERENCE TO THE CURRENCY OF BORROWER'S COUNTRY]) or in relation to any Financing Agreement.]

6.7 [Default.]

[Promptly, and in any event within [INSERT NUMBER]⁹ Business Days after an officer of the Borrower obtains knowledge thereof, notice of the occurrence of any event which constitutes a Default or Event of Default.]

6.8 [Governmental Reports and Filings.]

[Promptly, copies of all material filings, financial and other reports submitted by the Borrower to any governmental authorities having jurisdiction over the Borrower.]

6.9 Other Information.

With reasonable promptness, such other information or documents (financial or otherwise) about the Borrower or any of its Subsidiaries as any Lender or the Agent may reasonably request from time to time.

[Remainder of this page intentionally left blank.]

⁹ This number is typically three (3) to five (5) days.

Article 7. AFFIRMATIVE COVENANTS.

Until such time that all of the Commitments have terminated and the Loans, together with interest, fees and all other Obligations incurred under this Agreement are paid in full, the Borrower agrees that:

7.1 Use of Loans.

The Borrower shall use the proceeds of all Loans for the sole purpose of [INSERT DESCRIPTION OF THE USES OF THE LOANS, E.G., FOR GENERAL CORPORATE PURPOSES, ACQUISITION OF ASSETS/SHARES; CAPITAL EXPENDITURES, REFINANCING].

7.2 Corporate Existence.

[The Borrower shall, and shall cause each of its Subsidiaries to, maintain in full force and effect its corporate, limited liability or other existence and authority, and all of its rights, franchises authorizations, permits, and licenses and patents, trademarks, service marks, trade names, copyrights, know-how and formulas, or rights thereto, that are material to its business and operations.]

7.3 Compliance with Laws.

The Borrower shall, and shall cause each of its Subsidiaries to, comply with the requirements of all applicable laws, regulations, rules, approvals, permits, licenses and orders of all governmental authorities and bodies, foreign or domestic, in relation to its franchise, the conduct of its business and the ownership of its property (including those in relation to [INSERT ANY SPECIFIC LAWS OF CONCERN, E.G., ENVIRONMENTAL, MONEY LAUNDERING, PENSION OR LABOR LAWS]).

7.4 Taxes.

The Borrower will, and will cause each of its Subsidiaries to, file or cause to be filed all tax returns that are required to be filed by it and pay all taxes payable by it which have become due pursuant to such tax returns and pay all other taxes, charges and assessments imposed upon it or its properties or assets or in relation to its franchise, income or businesses which have become due, except for those contested in good faith and by appropriate proceedings and for which adequate reserves have been established in conformity with GAAP.

7.5 Maintenance of Properties.

The Borrower shall, and shall cause its Subsidiaries to, maintain all properties and assets that are material to its franchise, business and operations in good condition, repair and working (including by replacement thereof), as would a prudent owner and operator of similar properties and assets.

7.6 Insurance.

The Borrower shall, and shall cause its Subsidiaries to, maintain, with financially sound and responsible insurers, insurance on all their respective properties in at least

such amounts, and with such reasonable amounts of self-insurance and against at least such risks as are usually insured against in the same general area by companies of established repute engaged in the same or a similar business; and shall furnish to the Lenders, upon request from the Agent, information presented in reasonable detail as to the insurance so carried.

7.7 [Performance of Contracts.]

[The Borrower shall, and shall cause each of its Subsidiaries to, perform and fulfill all the material terms of its material contracts, and enforce the material terms of each such contract.]

7.8 [Transactions with Affiliates.]

The Borrower shall, and shall cause each of its Subsidiaries to, conduct all transactions with its Affiliates on customary, fair and reasonable terms that are no less favorable to it than it would obtain in an arm's length transaction with another Person that is not an Affiliate.]

7.9 [Maintenance of Books of Record and Accounts.]

[The Borrower shall, and shall cause each of its Subsidiaries to, maintain its books of record and account in proper, true and correct order and in conformity with GAAP and the requirements of applicable laws and regulations of governmental authorities and bodies.]

7.10 Inspection and Visitation.

Upon the request of and reasonable prior notice by the Agent or any Lender, and during business hours, the Borrower shall, and shall cause its Subsidiaries to, permit authorized representatives of the Agent or such Lender to visit and inspect any of its premises, properties and operations, to discuss its business, operations and finances with its officers and its independent certified public accountants, and to examine its financial and accounting records.

7.11 [Fiscal Year End.]

[The Borrower shall, and shall cause each of its Subsidiaries to, maintain its fiscal year to end on [INSERT MONTH AND DATE].]

7.12 Payment Obligations *Pari Passu*.

The Borrower shall ensure that its obligations and liabilities under this Agreement constitute unconditional and general obligations of the Borrower that at all times rank at least *pari passu* with all other existing or future unsecured and unsubordinated Indebtedness of the Borrower.

7.13 Further Assurances.

The Borrower shall, and shall cause each of its Subsidiaries to, at its or such Subsidiary's expense, execute and/or deliver, or cause to be executed and/or delivered, to the Agent all additional documents, agreements and instruments, and take or cause

to be taken all such actions, as [the Agent/Required Lenders] may reasonably request to carry out more effectively the provisions and purposes of this Agreement and each other Financing Agreement.

[Remainder of this page intentionally left blank.]

Article 8. NEGATIVE COVENANTS

Until such time that all of the Commitments have terminated and the Loans, together with interest, fees and all other Obligations incurred under this Agreement, are paid in full, the Borrower agrees that:¹⁰

8.1 Conduct of Business.

¹⁰ The Lenders may wish to consider adding the following negative covenants to the extent applicable:

[Insert the following negative covenant to restrict payments to shareholders of the Borrower and/or its Subsidiaries.]

[8.____] [Restricted Payments]. The Borrower shall not, and shall cause its Subsidiaries not to, directly or indirectly, purchase, redeem or exchange any shares of its capital stock, declare or pay dividends thereon, or make any other distribution (whether property or cash) to its shareholders or set aside funds for such purpose, except that, provided no Default or Event of Default has occurred and is then continuing and so long as permitted by law, the Borrower may [INSERT EXCEPTIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS].]

[Insert the following negative covenant to restrict the types of investments that may be made by the Borrower and its Subsidiaries.]

[8.____] [Investments; Loans]. The Borrower shall not, and shall cause its Subsidiaries not to, make any loan, extension of credit or capital contribution, purchase any shares, bonds, notes, debentures or other securities or make any investment in any Person except: (i) extensions of trade credit and asset purchases in the ordinary course of business; (ii) shareholdings of the Borrower in its Subsidiaries; (iii) [INSERT OTHER INVESTMENTS AND/OR ACQUISITIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS AS "PERMITTED INVESTMENTS" AND "PERMITTED ACQUISITIONS" AND DEFINE THOSE TERMS IN THE LOAN AGREEMENT]; (iv) advances to its employees for reasonable business purposes in the ordinary and usual course of business; and (v) [INSERT OTHER EXCEPTIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS].]

[Insert the following negative covenant to restrict the Borrower and its Subsidiaries from entering into leases.]

[8.____] [Leases]. The Borrower shall not, and shall cause its Subsidiaries not to, enter into or permit to exist any arrangement for the leasing by it as lessee of any real or personal property, except: (i) leases of rights-of-way and easements; (ii) lease in existence on the date of this Agreement [and listed in Schedule 8.____ hereto]; and [INSERT OTHER EXCEPTIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS].]

[Insert the following negative covenant to restrict capital expenditures of the Borrower and its Subsidiaries.]

[8.____] [Capital Expenditures]. The Borrower shall not, and shall cause its Subsidiaries not to, make any Capital Expenditure that would cause the aggregate of all capital expenditures made by it in any period below to exceed in the amount set forth below opposite such period:]

<u>Period</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____

The Borrower shall not, and shall cause its Subsidiaries not to, make any material change in the nature or character of its business, taken as a whole, as being conducted on the date of this Agreement, [except that the Borrower may [INSERT EXCEPTIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS]].

8.2 Equity of Subsidiaries.

The Borrower shall cause its Subsidiaries not to issue any capital stock or any options or warrants to purchase or securities that are convertible into any capital stock, except for (a) replacements of outstanding stock; (b) stock splits and similar issuances; and (c) [INSERT EXCEPTIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS].

8.3 Mergers, Consolidations.

The Borrower shall not, and shall cause its Subsidiaries not to, merge or consolidate with any Person, except that the Borrower may [INSERT EXCEPTIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS].

8.4 Sale of Assets, Etc.

The Borrower shall not, and shall cause its Subsidiaries not to, sell, lease, transfer or dispose any of its Assets (or agree to do so or grant a right or option in respect thereof), except for: (a) sales of inventory or goods or used or surplus equipment or other assets in the ordinary and usual course of business and operations; (b) the lease or sub-lease of real or personal property in the ordinary and usual course of business; and (c) [INSERT OTHER EXCEPTIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS].

8.5 Liquidation, Etc.

The Borrower shall not, and shall cause its Subsidiaries not to, liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or sell all or substantially all of its Assets.

8.6 Indebtedness.

The Borrower shall not, and shall cause its Subsidiaries not to, directly or indirectly, create, incur, assume or guarantee or be liable for, any Indebtedness except (without duplication):

- (a) Indebtedness for the Obligations under this Agreement;
- (b) Indebtedness in existence on the date of this Agreement [and listed in Schedule 8.6 hereto];
- (c) Indebtedness for accrued expenses and current trade accounts payable incurred in the ordinary and usual course of business, and obligations under trade letters of credit incurred by the Borrower or any of its Subsidiaries in the ordinary and usual course of business, which are to be repaid in full not more than one year after the date such Indebtedness is incurred to finance the purchase of goods by the Borrower or such Subsidiary;

- (d) [Indebtedness which individually does not exceed JPY [INSERT AMOUNT] and in the aggregate with all other Indebtedness under this subsection (iv) would not exceed JPY [INSERT AMOUNT] at any time;]
- (e) [Indebtedness under [INSERT REFERENCE TO WORKING CAPITAL FACILITIES THAT LENDERS ARE WILLING TO PERMIT, IF ANY, IN ADDITION TO ANY WORKING CAPITAL FACILITIES IN EXISTENCE UNDER SUBSECTION (ii) ABOVE];] and
- (f) [Any refinancing, refunding or renewal of the Indebtedness described under subsections (ii) and (iv) if the principal amount outstanding thereunder on the date of refinancing, refunding or renewal is not increased and the direct and contingent obligors and any credit support for such Indebtedness are not released or changed.]

8.7 Liens.

The Borrower shall not, and shall cause its Subsidiaries not to, directly or indirectly, create, assume or permit to exist any Lien upon any of its Assets of any kind, whether now owned or acquired after the date of this Agreement, or any income, profits or proceeds therefrom, or file or permit the filing of, or permit to remain in effect, any registration or financing statement or similar notice of any Lien upon any Asset under any local or foreign law, except in relation to the following:

- (a) Liens existence on the date of this Agreement [and listed in Schedule 8.7 hereto];
- (b) Liens for current taxes, assessments or similar governmental charges which are not required to be paid pursuant to Article 3.4 (*Payments Made Free and Clear*) or Article 3.5 (*Gross-Up for Taxes*);
- (c) Liens imposed by applicable law such as workmen's, mechanics', carriers', repairmen's or warehousemen's Liens, pledges and deposits in relation to workers' compensation, unemployment insurance and other types of social security, Liens of landlords, Liens of banks and rights of set-off and other similar statutory Liens, which are incurred in the ordinary and usual course of business;
- (d) easements, rights-of-way and similar encroachments and restrictions and other minor defects or irregularities in title, which do not and will not interfere in any material manner with its business or operations as conducted in the ordinary and usual course of business;
- (e) [other Liens securing Indebtedness in amounts not exceeding in the aggregate JPY [INSERT AMOUNT] (or its equivalent in [INSERT CURRENCY OF BORROWER'S COUNTRY]);] and
- (f) [INSERT OTHER EXCEPTIONS REQUESTED BY BORROWER AND ACCEPTABLE TO LENDERS].

8.8 [Other Agreements.]

[The Borrower shall not, and shall cause its Subsidiaries not to, enter into any agreement or arrangement containing a provision or requirement that would be breached or contravened by the performance or observance of any provision of this Agreement or any other Financing Agreement.]

[Remainder of this page intentionally left blank.]

Article 9. FINANCIAL COVENANTS.

Until such time as all of the Commitments have terminated and the Loans, together with interest, fees and all other Obligations incurred under this Agreement, are paid in full, the Borrower agrees that:¹¹

9.1 [Rating.]

[The Borrower will not permit the rating of its long-term obligations by [INSERT NAME OF THE RATING AGENCY] to be less than [INSERT MINIMUM RATING] at any time.]

9.2 [Consolidated Net Worth.]

[The Borrower will not permit its Consolidated Net Worth as at the last day of any fiscal year to be less than [INSERT APPROPRIATE STANDARDS].]

9.3 [Minimum Consolidated Tangible Net Worth.]

[The Borrower will not permit its Consolidated Tangible Net Worth as at the last day of any fiscal quarter during any [fiscal year] set forth below to be less than the amount set forth opposite such [fiscal year] below:]

<u>Fiscal Year Ended</u>	<u>Amount</u>

9.4 [Current Ratio.]

[The Borrower will not permit the ratio of its Consolidated Current Assets to its Consolidated Current Liabilities as at the last day of any fiscal quarter to be less than [__: __].]

9.5 [Fixed Charge Ratio.]

[The Borrower will not permit the ratio of (i) its Consolidated EBITDA to (ii) its Consolidated Fixed Charges (x) for any period beginning on the date hereof and ending on the last day of a fiscal quarter ended on or prior to [INSERT MONTH AND DAY], or for any period of the four consecutive fiscal quarters then ended, if shorter (in either case taken as one accounting period), to be less than __: __ and (y) for any period of four consecutive fiscal quarters (taken as one accounting period) ended

¹¹ Not all financial covenants may be required or appropriate for any one transaction. Lenders and borrowers may select among those specified herein or others.

during a fiscal year of the Borrower set forth below to be less than the ratio set forth opposite such year below:]

<u>Fiscal Year Ended</u>	<u>Ratio</u>

9.6 [Total Debt Coverage Ratio.]

[The Borrower will not permit the ratio of (i) its Consolidated EBITDA to (ii) its total outstanding Indebtedness (x) for any period beginning on the date hereof and ending on the last day of a fiscal quarter ended on or prior to [INSERT MONTH AND DAY], or for any period of the four consecutive fiscal quarters then ended, if shorter (in either case taken as one accounting period), to be less than [__:__] and (y) for any period of four consecutive fiscal quarters (taken as one accounting period) ended during a fiscal year of the Borrower set forth below to be less than the ratio set forth opposite such year below:]

<u>Fiscal Year Ended</u>	<u>Ratio</u>

9.7 [Minimum Consolidated EBITDA.]

[The Borrower will not permit its Consolidated EBITDA (i) for any period beginning on the date hereof and ending on the last day of a fiscal quarter ended on or prior to [INSERT MONTH AND DAY], or for any period of the four consecutive fiscal quarters then ended, if shorter (in either case taken as one accounting period), to be less than JPY [INSERT AMOUNT] and (ii) for any period of four consecutive fiscal quarters (taken as one accounting period) ended during a fiscal year of the Borrower set forth below to be less than the amount set forth opposite such year below:]

<u>Fiscal Year Ended</u>	<u>Amount</u>

9.8 [Minimum Consolidated Working Capital.]

[The Borrower will not permit its Consolidated Working Capital as at the last day of any fiscal quarter during a fiscal year of the Borrower set forth below to be less than the amount set forth opposite such fiscal year below:]

<u>Fiscal Year Ended</u>	<u>Amount</u>

[Remainder of this page intentionally left blank.]

Article 10. EVENTS OF DEFAULT.

10.1 Events of Default.

Each of the following specified events shall be an “*Event of Default*” for purposes of this Agreement:

(a) Payments.

The Borrower shall (i) default in the payment when due of any principal of any Loan or (ii) default in the payment when due of any interest on any Loan or any fees or any other Obligations and such default shall continue unremedied for two or more days; or

(b) Representations, etc.

Any representation, warranty or statement made by the Borrower or any of its Subsidiaries herein or in any other Financing Agreement or in any certificate delivered pursuant hereto or thereto shall prove to be untrue [in any material respect] on the date as of which made or deemed made [and if such representation and warranty is capable of cure, remains uncured for a period of [30] days][, provided that for purposes of this Article 10.1(b), any qualification of a representation and warranty as to materiality shall be disregarded]¹²; or

(c) Covenants.

The Borrower shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Articles [7.6 (*Insurance*)], [7.12 (*Payment Obligations Pari Passu*)]¹³, Article 8 (*Negative Covenants*) or Article 9 (*Financial Covenants*) or (ii) default in the due performance or observance by it of any other term, covenant or agreement (other than those referred to in Articles 10.1(a) (*Payments*) or 10.1(b) (*Representations*) or clause (i) of this Article 10.1(c) (*Covenants*)) contained in this Agreement and such default shall continue unremedied for a period of [INSERT NUMBER] days after the occurrence of such default; or

(d) Cross-Default Under Other Indebtedness.

The Borrower shall (i) default in any payment of any Indebtedness (other than the Loans) beyond the period of grace (not to exceed [INSERT NUMBER] days), if any, provided in the instrument or agreement under which such

¹² If the first bracketed language will be used in any case where any representation and warranty is already subject to a materiality standard, the final bracketed phrase should also be added to avoid any issues with a “double materiality” standard for such representations and warranties under this Event of Default.

¹³ Other or different provisions may be added here which cause an immediate Event of Default upon breach (no cure period), depending upon the Borrower’s business and the Lenders’ credit judgment.

Indebtedness was created or (ii) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than the Loans) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its stated maturity; or any Indebtedness of such Person shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; or

(e) Government Actions.

Any governmental authority

- (i) condemns, nationalizes, seizes, compulsorily acquires or otherwise expropriates all or any substantial part of the Assets of the Borrower or any of its Subsidiaries or of the business or operations of such Person or of its registered capital, or takes any action that would result in the dissolution or disestablishment of such Person, or
- (ii) assumes custody or control of all or any substantial part of the Assets of such Person or of the business or operations of such Person, or of its registered capital; or

(f) Bankruptcy.

The Borrower or any of its Subsidiaries shall, in any relevant jurisdiction,

- (i) commence or apply for the commencement of a voluntary case or other proceeding, or an application for the commencement of an involuntary case or other proceeding being initiated against such Person and remain undismissed and unstayed for a period of [INSERT NUMBER] days, in either case seeking civil rehabilitation, corporate reorganization, corporate arrangement, bankruptcy, special liquidation or other relief with respect to such Person or its debts under any applicable bankruptcy, reorganization, insolvency or other similar law of any jurisdiction now or hereafter in effect or seeking the appointment of a trustee, receiver or liquidator, custodian or other similar official of such Person or any substantial part of its property,
- (ii) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it,
- (iii) admit in writing its inability to pay its debts generally as they become due or generally failing to pay such debts as they become due, or
- (iv) make or consent to any assignment of any material portion of its assets for the benefit of creditors; or

any corporate action is taken by the Borrower or any of its Subsidiaries for the purpose of effecting any of the foregoing; or

(g) Judgments.

One or more judgments or decrees shall be entered against the Borrower or any of its Subsidiaries involving in the aggregate for such Person a liability (not paid or fully covered by insurance) of JPY [INSERT AMOUNT] or more, and all such judgments or decrees shall not have been vacated, discharged or stayed within [INSERT NUMBER] days after the entry thereof; or

(h) Attachment.

Issuance of any order or notice of provisional attachment or attachment, of assets of the Borrower or any of its Subsidiaries with a fair market value of JPY [INSERT AMOUNT] or more or any such assets are otherwise attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors of the Borrower or such Subsidiary; or

(i) Enforceability.

Any material provision of any Financing Agreement for any reason ceases to be valid, binding and enforceable in accordance with its terms (or the Borrower or any of its Subsidiaries shall challenge the enforceability of any Financing Agreement or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Financing Agreement has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms); or

(j) Material Agreements.

Any default or breach by the Borrower occurs and is continuing under any of the following agreements or any of the following agreements shall be terminated for any reason: [INSERT LIST OF MATERIAL AGREEMENTS]; or

(k) Material Adverse Change.

An event, condition or circumstance has occurred or exists which could reasonably be expected to result in a Material Adverse Change or as a result thereof there exists a Material Adverse Change in relation to the Borrower or any of its Subsidiaries; or

(l) Change of Control.

The [NAME OF ULTIMATE PARENT/PRINCIPAL SHAREHOLDER OF BORROWER] ceases to hold, directly or indirectly (through its Subsidiaries), more than 50% of the issued and outstanding voting shares of the Borrower or ceases to possess, directly or indirectly (through such Person's Subsidiaries), the power to direct or cause the direction of management and policies of the Borrower, whether through the ownership of voting securities, by contract or otherwise;

10.2 Remedies

Any time that an Event of Default exists, the Agent, upon the written request of [the Required Lenders/all Lenders], shall by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Agent or any Lender individually to enforce its claims against the Borrower (provided, that, if an Event of Default specified in Article 10.1(f) (*Bankruptcy*) or Article 10.1(h) (*Attachment*) shall occur with respect to the Borrower, the result that would occur upon the giving of written notice by the Agent to the Borrower as specified in clauses (a) and (b) below shall occur automatically without the giving of any such notice):

- (a) declare the Total Commitment terminated, whereupon the Commitment of each Lender shall forthwith terminate immediately and any accrued and unpaid Commitment Fee shall forthwith become due and payable without any other notice of any kind; and
- (b) declare the principal of and any accrued interest in respect of all Loans and all obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

[Remainder of this page intentionally left blank.]

Article 11. THE AGENT.

11.1 Appointment.

- (a) Each of the Lenders hereby irrevocably designates and appoints the Agent as the agent of such Lender under this Agreement and the other Financing Agreements. Each of the Lenders authorizes the Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Financing Agreements and to exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement and the other Financing Agreements, together with such other powers as are reasonably incidental thereto.
- (b) The Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Financing Agreements against the Agent.

11.2 Delegation of Duties.

The Agent may execute any of its duties under this Agreement and the other Financing Agreements by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

11.3 Exclusion of Liability.

Neither the Agent nor any of its Affiliates, and none of the Agent's or such Affiliate's officers, directors, employees, agents, representatives or attorneys-in-fact, shall be:

- (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Financing Agreement, except for its or such Person's own gross negligence or willful misconduct; or
- (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Borrower or any of its Subsidiaries or any officer or representative thereof contained in this Agreement or any other Financing Agreement or in any certificate, report, statement or other document referred to in, or received by the Agent in connection with, this Agreement or any other Financing Agreement; or
- (c) responsible in any matter to the Lenders for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Agreement or for any failure of the Borrower to perform its obligations hereunder or thereunder.

11.4 No Obligation to Monitor.

The Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Financing Agreement, or to inspect the properties, books or records of the Borrower or any of its Subsidiaries.

11.5 Reliance.

- (a) The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Agent.
- (b) The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Financing Agreement unless it shall first receive such advice or concurrence of the Required Lenders (or, where expressly provided in this Agreement or any other Financing Agreement, the Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.
- (c) The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Financing Agreements in accordance with a request of the Required Lenders (or, where expressly provided in this Agreement or any other Financing Agreements, the Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.
- (d) Independently and without reliance upon the Agent, each Lender, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of the Borrower and its Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of the Borrower and its Subsidiaries and, except as expressly provided in this Agreement, the Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter.

11.6 Default; Event of Default.

- (a) The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Agent has received notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Agent receives such a notice, it shall give notice thereof to the Lenders.

- (b) The Agent shall take such action with respect to a Default or Event of Default as shall be reasonably directed by the [Required] Lenders.

11.7 Agent in its Individual Capacity.

The Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower and its Subsidiaries as though the Agent were not an Agent hereunder and under the other Financing Agreements. With respect to the Loans made by it, each Agent shall have the same rights and powers under this Agreement and the other Financing Documents as any Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” shall include any Agent in its individual capacity.

11.8 Indemnification.

To the extent the Agent is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Agent, in proportion to their respective initial Commitments, for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Agent in performing its duties hereunder or under any other Financing Agreement, or in any way relating to or arising out of this Agreement or any other Financing Agreement; *provided*, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent’s gross negligence or willful misconduct.

11.9 Successor Agent.

- (a) The Agent may resign from the performance of all its functions and duties hereunder and/or under the other Financing Agreements at any time pursuant to the procedures described below:
 - (i) The Agent shall give [INSERT NUMBER] Business Days’ prior written notice to the Borrower and the Lenders of the Agent’s intention to resign from the performance of all its functions and duties hereunder and/or under the other Financing Agreements. Such resignation shall take effect upon the appointment of a successor Agent pursuant to clauses (ii) and (iii) below or as otherwise provided below.
 - (ii) Upon any such notice of resignation, the Lenders shall appoint a successor Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower.
 - (iii) If a successor Agent shall not have been so appointed within such [INSERT NUMBER] Business Day period, the Agent, with the consent of the Borrower, may then appoint a successor Agent who shall serve as Agent hereunder or thereunder until such time, if any, as the Lenders appoint a successor Agent as provided above.
- (b) The dismissal of the Agent shall follow the procedures described below:

- (i) The Required Lenders may dismiss the Agent by giving written notice thereof to each of the other Lenders, the Borrower, and the Agent; *provided*, however, that such dismissal shall not become effective until a successor Agent is appointed and such successor accepts such appointment.
- (ii) If the Required Lenders give notice pursuant to clause (i) above, the Required Lenders may appoint a successor Agent upon obtaining consent from the Borrower.
- (c) The outgoing Agent shall deliver to the successor Agent all documents and the materials it has kept as the Agent under this Agreement, and shall give all reasonable support necessary for the successor Agent to perform the duties of the Agent under this Agreement.

[Remainder of this page intentionally left blank.]

Article 12. MISCELLANEOUS.

12.1 Notices.

- (a) All communications, notices, requests and demands to or upon any party hereto shall, in order to be effective, be in writing (including by facsimile or electronic mail).
- (b) Any communication, notice, request or demand to a party hereto shall be deemed to have been duly given or made (i) when delivered in person, personally served or delivered by courier service, (ii) upon receipt of facsimile or electronic mail or (iii) or [INSERT NUMBER] Business Days after being deposited in the mail, postage prepaid, and addressed to such party at its address provided in clause (c) below, *provided* that any communication, notice, request or demand to or upon any Agent or any of the Lenders shall not be effective until received by such party.
- (c) Any communication, notice, request or demand to (i) the Borrower or the Agent shall be addressed to its address as set forth below and (ii) any of the other parties hereto shall be addressed to its notice address set forth opposite its signature hereto, or, in each case, at such other address as such party may hereafter notify to the other parties hereto in writing:

The Borrower: [INSERT NAME OF THE BORROWER]
[INSERT COMPLETE ADDRESS AND POSTAL CODE OF THE
BORROWER]
Attention: [INSERT NAME AND/OR TITLE OF POSITION OF
OFFICER]
Facsimile No.: [INSERT NUMBER]
Email address: [INSERT EMAIL ADDRESS]

The Agent: [INSERT NAME OF THE AGENT]
[INSERT COMPLETE ADDRESS AND POSTAL CODE OF THE
AGENT]
Attention: [INSERT NAME OF PERSON AND/OR
DEPARTMENT]
Facsimile No.: [INSERT NUMBER]
Email address: [INSERT EMAIL ADDRESS]

12.2 Amendments or Waiver.

- (a) Subject to clauses (b) and (c) below no amendment or waiver of any provision of this Agreement, nor consent to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- (b) No amendment, waiver or consent shall, unless in writing and signed by each of the Lenders, do any of the following:

- (i) increase the Commitments of any Lender or subject any Lender to any additional obligations;
 - (ii) reduce the principal of, or interest on, the Loans or any fees hereunder;
 - (iii) postpone any date fixed for any scheduled payment in respect of principal of, or interest on, the Loans or any fees hereunder;
 - (iv) change the percentage of the Commitments or Loans which shall be required for the Lenders or any of them to take any action hereunder; or
 - (v) amend this Article 12.2 (*Amendments or Waiver*) or any of Articles 2.6(a) (*Sharing of Payments*), 12.5 (*Expenses*), 12.6 (*Indemnity*), 12.7 (*Right of Setoff*) or 12.8 (*Benefit of Agreement; Assignment*).
- (c) No amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to each of the Lenders required hereinabove to take such action, affect the rights or duties of the Agent under this Agreement.

12.3 Indulgence Not a Waiver; Remedies Cumulative.

No failure or delay on the part of the Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Financing Agreements shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Financing Agreements are cumulative to, and not exclusive of, any rights or remedies otherwise available.

12.4 Survival of Representations and Warranties.

All representations and warranties, and all indemnities (including pursuant to Article 12.6 (*Indemnity*)) made hereunder, in the other Financing Agreements and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and other Financing Agreement and the making and repayment of the Loans hereunder.

12.5 Expenses.

Whether or not the transactions contemplated hereby shall be consummated, the Borrower shall:

- (a) pay promptly all reasonable fees, expenses and disbursements incurred by the Agent and the Lenders (including fees and costs of counsel) in connection with the negotiation, preparation, execution and administration of the Financing Agreements and in connection with any consents, amendments, restatements waivers, supplements or other modifications to any Financing Agreement (whether or not effective or executed) and any other documents or matter requested by any party thereto;

- (b) after the occurrence of an Event of Default, pay promptly all fees, expenses and disbursements, including reasonable counsel's fees and costs of settlement, incurred by the Agent and the Lenders in enforcing any Financing Agreement or any Obligations of or in collecting any payments due hereunder or under the other Financing Agreements or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings;
- (c) pay promptly all the costs of furnishing all opinions by counsel for the Borrower or any of its Subsidiaries (including any opinions requested by Lenders as to any legal matters arising hereunder) and as to matters related the Borrower's performance of and compliance with all agreements and conditions on its part to be performed or complied with under this Agreement and the other Financing Agreements, including with respect to confirming compliance with solvency requirements;
- (d) pay and hold each of the Lenders and the Agent harmless from and against any and all present and future stamp and other similar taxes with respect to the foregoing matters and save each of the Lenders and the Agent harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Lender) to pay such taxes; and
- (e) pay or cause to be paid all court taxes, stamp or registration or filing duties or other fees, expenses or taxes and any penalty or interest with respect thereto which may be imposed by any law or governmental authorities in connection with the execution, delivery, performance or registration of this Agreement, any other Financing Agreement or any agreements or documents required hereunder or thereunder.

12.6 Indemnity.

- (a) In addition to the payment of expenses pursuant to Article 12.5 (*Expenses*), whether or not the transactions contemplated hereby shall be consummated, the Borrower agrees to defend, indemnify, pay and hold harmless the Agent and the Lenders and their respective officers, directors, employees, agents, sub-agents, trustees, advisors and Affiliates [(collectively called the "***Indemnified Persons***")], from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements, (including the reasonable fees and disbursements of counsel (but excluding any such liabilities, obligations, losses, etc., to the extent incurred by reason of the gross negligence or willful misconduct of the Person to be indemnified)) incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of:
 - (i) any investigation, litigation or other proceeding (whether or not the Agent or any Lender is a party thereto) related to the entering into and/or performance of this Agreement or any other Financing Agreement;

- (ii) the use of the proceeds of any Loans hereunder or the consummation of any transactions contemplated in this Agreement or in any other Financing Agreement;
 - (iii) the result of credit having been extended, suspended or terminated under this Agreement and the other Financing Agreements the administration of such credit; or
 - (iv) in connection with or arising out of the transactions contemplated hereunder or the other Financing Agreements and any actions or failures to act in connection therewith.
- (b) No Indemnified Person shall be responsible for or liable to any other party to any Financing Agreement, any successor, assignee or third party beneficiary of such Person or any other Person asserting claims derivatively through such party, for indirect, punitive, exemplary or consequential damages which may be alleged as a result of credit being extended, suspended or terminated under any Financing Agreement or as a result of any other transaction contemplated hereunder or thereunder.

12.7 Right of Setoff.

In addition to (and not in limitation of) any rights now or hereafter granted under applicable law or otherwise, upon the occurrence of an Event of Default, each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by such Lender (including by branches and agencies of such Lender wherever located), to or for the credit or the account of the Borrower against and on account of the Obligations and liabilities of the Borrower to such Lender under this Agreement or under any of the other Financing Agreements, and all other claims of any nature or description arising out of or connected with this Agreement or any other Financing Agreement, [provided, that the amounts due under said obligation, liabilities and/or claims shall be due and payable to such Lender].

12.8 Benefit of Agreement; Assignment.

- (a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided* that the Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Lenders.
- (b) Any Lender may at any time grant to one or more Persons (each a “**Participant**”) participating interests in its Commitment and/or any or all of its Loans. In the event of any such grant by a Lender of a participating interest to a Participant, such Lender shall remain responsible for the performance of its obligations hereunder, and the Borrower and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and/or obligations hereunder. Any agreement pursuant to which any Lender may grant such a participating interest shall provide that such Lender

shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including the right to approve any amendment, modification or waiver of any provision hereof; *provided* that such participation agreement may provide that such Lender will not agree to any modification, amendment or waiver of this Agreement described in Article 12.2(b) (*Amendments or Waiver*) without the consent of the Participant. The Borrower agrees that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Article 3 (*Increased Costs, Illegality, Taxes*) with respect to its participating interest. An assignment or other transfer which is not permitted by Article 12.8(c) or 12.8(d) shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this Article 12.8(c).

- (c) Any Lender may at any time assign to one or more Eligible Assignees all or part of all of its rights and obligations under this Agreement, and such Eligible Assignee shall assume such rights and obligations, upon and subject to
 - (i) execution of (and subsequent delivery to the Agent of an executed original of) an Assignment and Acceptance Agreement between the Lender and the Eligible Assignee substantially in the form of Exhibit E hereto with the insertions appropriately completed,
 - (ii) [written notice to the Borrower] [the written consent of the Borrower evidenced by its countersigning such Assignment and Acceptance Agreement where indicated on Exhibit E (such consent not to be unreasonably withheld or delayed, *provided* that if an Eligible Assignee is an Affiliate of the transferor Lender or was a Lender immediately prior to such assignment, no such consent of the Borrower shall be required)], and
 - (iii) payment by the Assignee to the transferor Lender of an amount equal to the purchase price agreed between such transferor Lender.
- (d) Any Lender may at any time assign all or any portion of its rights under this Agreement to [NAME OF CENTRAL BANK OF BORROWER'S DOMICILED NATION] or the Bank of Japan, *provided* that no such assignment shall release the transferor Lender from its obligations hereunder.
- (e) No Assignee, Participant or other transferee of any Lender's rights shall be entitled to receive any greater payment under Article 3 (*Increased Costs; Illegality; Taxes*) than such Lender would have been entitled to receive with respect to the rights transferred.
- (f) If any Lender transfers or assigns all or a part of its rights or obligations hereunder to any Eligible Assignee, any reference to such Lender in this Agreement shall thereafter refer to such Lender and to such Eligible Assignee to the extent of their respective interests, and (subject to the provisions of Article 12.8(d)) the transferor Lender shall be released from its obligations hereunder to a corresponding extent without further consent or action by any Party required. The Agent agrees that promptly upon receipt of an executed Assignment and Acceptance, it shall notify the other Lenders of such

assignment pursuant thereto. Any Lender may furnish any information concerning the Borrower and its Subsidiaries in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants).

- (g) All expenses incurred in connection with any participation or assignment referred to in this Article 12.8 shall be borne by the transferring Lender or the Participant or Eligible Assignee, as the applicable agreement between them shall specify. In the case of an assignment under Article 12.8(c), the Assignor or the Eligible Assignee, as the case may be, shall pay to the Agent, by the effective date of such assignment, the amount of JPY [INSERT AMOUNT] per Eligible Assignee, together with applicable consumption and other taxes, if any, as consideration for administrative duties performed by the Agent in connection with the assignment.
- (h) The principal amount of the outstanding Loan of the assigning Lender subject to each such assignment, if less than the total amount of the Loan of such assigning Lender, shall in no event be less than JPY [INSERT AMOUNT] or an integral multiple of JPY [INSERT AMOUNT].

12.9 Governing Law; Jurisdiction.

- (a) This Agreement and the other Financing Agreements and the rights and obligations of the parties hereunder and thereunder shall be construed in accordance with and be governed by the law of Japan.
- (b) Any legal action or proceeding against the Borrower with respect to this Agreement or any other Financing Agreement may be brought in the Tokyo District Courts and, by execution and delivery of this Agreement, the Borrower hereby irrevocably accepts for itself and in respect of its Assets, generally and unconditionally, the jurisdiction of the aforesaid courts.
- (c) [The Borrower further irrevocably consents to the service of process out of the Tokyo District Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Borrower at its address set forth opposite its signature below, such service to become effective [] days after such mailing.]
- (d) Nothing herein shall affect the right of the Agent and/or any Lender to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Borrower in any other jurisdiction.
- (e) The Borrower hereby irrevocably and unconditionally waives to the extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Financing Agreement brought in the Tokyo District Courts. The Borrower hereby irrevocably waives, to the fullest extent permitted by law, the defense of inconvenient forum to the maintenance of such action or proceeding in any such court.

12.10 Obligation to Make Payments in Yen.

The obligation of the Borrower to make payment in Yen of the principal of and interest on the Loans and any other amounts due hereunder or under any other Financing Agreement to the Agent's Payment Office as provided in Article 2.4 (*Procedure for Payment by Borrower*) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment, which is expressed in or converted into any currency other than Yen, except to the extent such tender or recovery shall result in the actual receipt by the Agent at the Agent's Payment office on behalf of the Lenders of the full amount of Yen expressed to be payable in respect of the principal of and interest on the Loans and all other amounts due hereunder or under any other Financing Agreement. The obligation of the Borrower to make payments in Yen as aforesaid shall be enforceable as an alternative or additional cause of action for the purpose of recovery in Yen of the amount, if any, by which such actual receipt shall fall short of the full amount of Yen expressed to be payable in respect of the principal of and interest on the Loans and any other amounts due under any other Financing Agreement, and shall not be affected by judgment being obtained for any other sums due under this Agreement or under any other Financing Agreement.

12.11 Confidentiality.

- (a) Subject to the provisions of Article 12.11(b) (*Confidentiality*), each of the Agent and the Lenders agrees that it will not disclose to any other party (other than its directors, officers, employees, auditors, advisors, representatives and counsel who shall be subject to the provisions of this Article 12.11 (*Confidentiality*) to the same extent as the Agent or such Lender) without the prior consent of the Borrower any information with respect to the Borrower or any of its Subsidiaries which is now or in the future furnished pursuant to this Agreement or any other Financing Agreement and which is designated by the Borrower to the Agent and the Lenders in writing as confidential or would customarily be treated as confidential in banking practice, *provided* that the Agent or the Lenders may disclose any such information:
 - (i) as is generally available to the public (other than as a result of a breach of this Article 12.11 (*Confidentiality*));
 - (ii) as may be required or appropriate in any report, statement or testimony submitted to any governmental or quasi-governmental authority or body, regulatory authority or body, court or tribunal having or claiming to have jurisdiction or supervision over the Agent or a Lender;
 - (iii) as may be required or appropriate in relation to any summons, subpoena or litigation;
 - (iv) in order to comply with any law, order, regulation, directive or ruling applicable to the Agent or a Lender; and
 - (v) to any prospective or actual transferee or participant (or its advisor) in connection with any contemplated transfer or participation of the Loan or any interest therein by a Lender, *provided* that such party agrees to

maintain the confidentiality of such information on the terms and conditions set forth in this Article 12.11 (*Confidentiality*).

- (b) The Borrower hereby acknowledges and agrees that the Agent or any Lender may share with any of its Affiliates any information related to the Borrower or any of its Subsidiaries (including any nonpublic customer information regarding the creditworthiness of the Borrower and its Subsidiaries, provided such Persons shall be subject to the provisions of this Article 12.11 (*Confidentiality*) to the same extent as the Agent and the Lenders).

12.12 Use of English Language.

All communications, notices, requests and demands under this Agreement or any other Financing Agreement shall be, and shall be effective, when given or made in the English language, and documents, information and materials to be furnished under this Agreement or in any other Financing Agreement shall be in the English language.

12.13 Execution in Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Agent.

12.14 Effectiveness.

This Agreement shall become effective on the date on which the Borrower, the Agent and each of the Lenders shall have signed a copy hereof (whether the same or different copies) and shall have delivered the same to the Agent.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement on the date first above written.

Address:

[NAME OF BORROWER]

Attn:

By _____

(Tel)

Title:

(Fax)

[NAME OF AGENT]

[as a Lender and] as Agent

By _____

Attn:

Title:

(Tel)

(Fax)

[LENDERS SIGNATURE LINES TO BE ADDED]

Attn:

(Tel)

(Fax)

SCHEDULE I

LENDERS' COMMITMENTS

<u>Name of Lender</u>	<u>Domestic Lending Office</u>	<u>Commitment</u>
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SCHEDULE II-1

**[USE THIS SCHEDULE IF REPAYMENT IN FIXED AMOUNTS WILL BE MADE
ON FIXED DATES]**

REPAYMENT SCHEDULE

No.	Maturity Date	Amount of Repayment in JPY
1		
2		
3		
4		
TOTAL		

SCHEDULE II-2

[USE THIS SCHEDULE IF USING AMORTIZED REPAYMENTS]

REPAYMENT SCHEDULE

No.	Maturity Date	Percentage of Principal of All Loans Payable
1		
2		
3		
4		
TOTAL		

SCHEDULE III

**[USE THIS SCHEDULE IF THE APPLICABLE MARGIN WILL BE VARIABLE
AND BASED ON SOME CRITERIA SUCH AS THE CREDIT RATING OF THE
BORROWER]**

PRICING GRID FOR APPLICABLE MARGIN

[CRITERIA FOR DETERMINING APPLICABLE MARGIN]	Applicable Margin Rate (per annum)
<u>[e.g. credit rating of the Borrower as of the first date of the applicable Interest Period]</u>	<u>[CORRESPONDING APPLICABLE MARGIN]</u>

For purposes of this Schedule, the following terms have the following meanings, subject to the concluding paragraph of this Schedule:

“Rating Agencies” shall mean both [XXX], and [YYY], together.

“[XXX]” shall mean [NAME OF A RATING AGENCY].

“[YYY]” shall mean [NAME OF A RATING AGENCY].

The credit ratings to be utilized for purposes of this Schedule are those assigned to the senior unsecured long-term debt securities of the Borrower without third-party credit enhancement, and any rating assigned to any other debt security of the Borrower shall be disregarded. If the Borrower is split-rated and the ratings differential between the two ratings is one notch, the higher of the two ratings will apply. If the Borrower is split-rated and the ratings differential between the two ratings is more than one notch, a rating that is one notch lower than the higher rating shall be used. In the event that the Borrower’s senior unsecured long-term debt securities are not rated by any of Rating Agencies, then the level for []/[] credit ratings shall apply.

Any adjustment to the Applicable Margin based on this Schedule on each Loan would take effect if so notified by the Borrower within the period of [INSERT NUMBER] Business Days prior to a first day of the applicable Interest Period. The Borrower shall promptly notify the Agent of any downgrade, upgrade, suspension or withdrawal of its credit ratings assigned by Rating Agencies.

If any Rating Agency revises, amends or replaces its credit rating system so that the credit ratings levels referred to in this Schedule are no longer used, then the references to credit rating levels contained in this Schedule shall be revised for the Loans under the Loan Agreement using such new credit rating levels as shall be confirmed by the Agent, after consultation with such Rating Agency (if necessary in the opinion of the Agent) and the Borrower in order to preserve the economic effect hereunder.

DEFINITIONS AND INTERPRETATION

Definitions. As used in this Agreement:

“**Affiliate**” means, in relation to a Person (called the “**relevant Person**” for purposes of this definition), any other Person that, directly or indirectly, (i) controls, is controlled by or is under common control with the relevant Person or is a director or officer of the relevant Person or (ii) owns more than 5% of the voting securities or partnership interests or similar interest of the relevant Person. The term “**control**” (including the correlative terms “**controlled by**” and “**under common control with**”), as used in this definition, of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests or similar interests, by contract or otherwise.

“**Agent**” has the meaning provided in the opening paragraph of this Agreement.

“**Agent’s Account**” means [INSERT DETAILS OF AGENT’S DESIGNATED BANK ACCOUNT], or such other bank account as the Agent may designate from time to time in writing to the Borrower and the Lenders:

“**Agent’s Payment Office**” means the office of the Agent located at [INSERT DETAILS OF AGENT’S PAYMENT OFFICE], or such other office as Agent may hereafter designate in writing as such to the other parties hereto.

“**Agreement**” means this Yen Loan Facility Agreement together with the schedules, annexes, exhibits and appendices hereto, as the same may be amended, restated, supplemented or otherwise modified, from time to time, in accordance with the terms hereof.

“**Applicable Interest Rate**” means, in relation to an Interest Period, the sum of (a) the [Euro Yen TIBOR / Yen TIBOR / Yen LIBOR] for such Interest Period plus (b) the Applicable Margin for such Interest Period.

[“**Applicable Margin**” means a rate per annum of [INSERT MARGIN RATE IN WORDS] percent ([INSERT MARGIN RATE IN NUMBERS]%).]¹⁴

“**Assets**” means, in relation to any Person, all the assets, properties, titles, rights and interests of every type and description, whether real, immovable or moveable, personal or mixed, or tangible or intangible, of such Person.

¹⁴ Insert the definition below in lieu of the bracketed language if the Applicable Margin will be variable rather than fixed.

“Applicable Margin” shall mean, with respect to an Interest Period, the rate per annum corresponding to the [credit rating or other indicator to determine Applicable Margin] of the Borrower as of [___] Business Days prior to the first day of such Interest Period as set forth in Schedule III attached hereto.”

[“**Availability Period**” means the period commencing on and including the [Business Day following the] date hereof and ending on but excluding the earliest to occur of (i) the Final Drawdown Date, (ii) the date the Total Commitment has been fully disbursed under this Agreement or (iii) the date on which all of the Commitments have been terminated or cancelled pursuant to the terms of this Agreement.”]¹⁵

“**Borrower**” has the meaning provided in the opening paragraph of this Agreement.

“**Borrower’s Country**” means [NAME OF COUNTRY].

“**Business Day**” means any day except Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions are authorized or required by law to close in Tokyo, [London]¹⁶ or [INSERT THE CITY OF THE BORROWER’S PRINCIPAL OFFICE].

[“**Capital Expenditures**” means, in relation to any Person and for any period, the total of all expenditures made by such Person during such period for fixed or capital assets or that, in accordance with GAAP, are or should be included as additions to property, plant or equipment (including Capitalized Lease Obligations).]

[“**Capitalized Lease Obligations**” means, in relation to any Person and for any period, all obligations under any leases of any properties (whether immovable or moveable) that, in accordance with GAAP, are or will be required to be capitalized on the books of such Person for such period.]

“**Commitment**” means, in relation to each Lender, the amount set forth opposite such Lender’s name in Schedule I as the same may be reduced from time to time pursuant to this Agreement.

“**Commitment Fee**” has the meaning provided in Article 1.2 (*Fees*).

[“**Consolidated Current Assets**” means, in relation to any Person and as at any date of determination, the total current assets of such Person and its Subsidiaries as at such date, determined on a consolidated basis and classified as such in accordance with GAAP.]

[“**Consolidated Current Liabilities**” means, in relation to any Person and as at any date of determination, the total current liabilities of such Person and its Subsidiaries as at such date, determined on a consolidated basis and classified as such in accordance with GAAP.]

[“**Consolidated EBITDA**” means, in relation to any Person and for a given period, the sum (without duplication) of the (i) net income (calculated without giving effect to any extraordinary gains and non-recurring or unusual gains), (ii) net interest expenses, (ii) provision for income taxes and (iii) depreciation and amortization expenses (to the extent such expenses were deducted in calculating the net income) minus any non-cash items included in calculating the net income, determined on a consolidated basis for such Person and its Subsidiaries in accordance with GAAP for such period.]

¹⁵ Insert bracketed language if the loan is subject to an availability period.

¹⁶ Insert London if the Yen LIBOR or Euro Yen TIBOR rates are being used.

[“**Consolidated Fixed Charges**” means, in relation to any Person and for any period, the sum of (i) interest expense, (ii) rental obligations payable under leases of immovable or moveable property and (iii) the principal amount payable of all Indebtedness for borrowed money, determined on a consolidated basis for such Person and its Subsidiaries in accordance with GAAP for such period.]

[“**Consolidated Net Worth**” means, in relation to any Person and as at any date of determination, the net worth of such Person and its Subsidiaries, determined on a consolidated basis and classified as such in accordance with GAAP.]

[“**Consolidated Tangible Net Worth**” means, in relation to any Person and as at any date of determination, the net worth of such Person and its Subsidiaries less the amount of all intangible items as at such date, determined on a consolidated basis and classified as such in accordance with GAAP.]

[“**Consolidated Working Capital**” means, in relation to any Person and as at any date of determination, the Consolidated Current Assets less the Consolidated Current Liabilities of such Person and its Subsidiaries as at such date.]

“**Default**” means any event, circumstance, act, omission or condition which would, with the passage of time, the giving of notice or the making of a determination under any Financing Agreement (or any combination of the foregoing), constitute an Event of Default.

“**Drawdown**” means a borrowing of Loans by the Borrower from the Lenders on a given date pursuant to a Drawdown Notice.

“**Drawdown Notice**” has the meaning provided in Article 1.3 (*Drawdown Notice*).

“**Eligible Assignee**” means [(i) a Lender, (ii) an Affiliate of a Lender, (iii) any Person (other than an individual) approved by the Agent (each such approval not to be unreasonably withheld or delayed), and (iv) a commercial bank or financial institution organized under the laws of Japan, having total assets in excess of JPY [INSERT AMOUNT] and a combined capital and surplus of at least JPY [INSERT AMOUNT]].¹⁷

[“**Euro Yen TIBOR**” means the interest rate per annum for Japanese Yen deposits for a [1/2/3/6]¹⁸ month period published or reported by the Japanese Bankers Association as quoted on [INSERT PAGE REFERENCE] at or about 11:00 a.m. (Tokyo time), or the time after 11:00 a.m. (Tokyo time) as close as possible to 11:00 a.m. (Tokyo time) two Tokyo Business Days prior to the first day of the relevant Interest Period; *provided*, however, that in the event of an initial Interest Period for any Drawdown for which no percentage rate of interest per annum for deposits for a comparable period appears on [INSERT PAGE REFERENCE], “Euro Yen TIBOR” shall mean such interest rate per annum as is reasonably decided upon by the Agent as the offered rate applicable for a drawdown in Yen for the relevant Loan in the Tokyo Interbank Market as of 11:00 a.m. (Tokyo time) of the second Tokyo Business Day prior to the first day of the relevant Interest Period or the nearest time thereto.]

¹⁷ Insert this definition if assignment of Lender’s interests will be permitted under Article 12.8 (*Benefit of Agreement; Assignment*). The definition of Eligible Assignee should be revised to reflect the type of entities that may become an Assignee to a Lender’s interests hereunder.

¹⁸ To be adjusted according to monthly, bimonthly, quarterly and semiannual interest payment periods.

“Event of Default” has the meaning provided in Article 10 (*Events of Default*).

“Final Drawdown Date” means [INSERT LAST DATE OF AVAILABILITY PERIOD]; *provided*, that if such date is not a Business Day, then the Business Day immediately preceding such date.

“Financing Agreements” means, collectively, this Agreement, [INSERT OTHER DOCUMENTS]¹⁹ and such other documents as the Borrower, Agent [and the Lenders]²⁰ agree to designate as Financing Agreements.

“GAAP” means the generally accepted accounting principles in effect in [Japan/the Borrower’s Country] consistently applied.

“Indebtedness” means, in relation to any Person, without duplication:

- (i) all obligations of such Person with respect to borrowed money (including for principal, interest, fees and other charges);
- (ii) all obligations of such Person for the deferred purchase price of property or services;
- (iii) all liabilities secured by any Lien on any Asset owned by such Person (whether or not such liabilities have been assumed by such Person);
- (iv) all Capitalized Lease Obligations of such Person;
- (v) all obligations or arrangements of such Person guaranteeing or intending to guarantee or providing credit support for any Indebtedness, lease, dividend or other payment obligation of any other Person in any manner, whether directly or indirectly, and whether contingent or not;
- (vi) the face amount of all letters of credit, letters of guarantee and/or documentary credits issued for the account of such Person and all drafts drawn thereunder; and
- (vii) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments.

“Indemnified Person” has the meaning provided in Article 12.6 (*Indemnity*).

“Initial Drawdown Date” means the date on which the first Drawdown occurs.

“Interest Payment Date” means [INSERT MONTH AND DAY], [INSERT MONTH AND DAY], [INSERT MONTH AND DAY], and [INSERT MONTH AND DAY]²¹ of each year, and the [INSERT DATE OF THE FINAL PAYMENT DATE OF THE PRINCIPAL OF THE LOAN]; and in the event that any

¹⁹ Add other agreements and any fee letters entered into in connection with this Agreement.

²⁰ If “the Lenders” are included in this definition, syndicate members then have the right to determine which documents, instruments and agreements are (and are not) included as Financing Agreements and subject to many of the terms and conditions of this Agreement.

²¹ Add or delete payment dates depending on monthly, bimonthly, quarterly, or semiannual interest payment periods.

such date is not a Business Day, it shall be the immediately succeeding Business Day unless such immediately succeeding Business Day falls in the next calendar month, in which case it shall be the immediately preceding Business Day, [*provided*, that in relation to each Loan, it shall also be on the date of prepayment (on the amount prepaid), if any, on maturity (whether by acceleration or otherwise) and, after such maturity, on demand.]

“Interest Period” means, in relation to a Loan, the period (i) commencing on (x) in the case of the initial payment of interest with regard to such Loan, the day on which such Loan is made under this Agreement or (y) in the case of each subsequent payment of interest, the immediately preceding Interest Payment Date and (ii) ending on the subsequent Interest Payment Date.

“Lender” has the meaning provided in the opening paragraph of this Agreement.

“Lien” means any lien (statutory or other), security interest, pledge, mortgage, hypothecation, charge or encumbrance of any kind, or any other type of preferential arrangement, including a lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property.

“Loan” has the meaning provided in Article 1.1 (*Loans*).

“London Business Day” means any day except Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions are authorized or required by law to close in London.]

“Material Adverse Change” means a material adverse change in (i) the business, operations, property, assets, condition (financial or otherwise) or prospects of the Borrower [*and/or*] its Subsidiaries, (ii) the ability of the Borrower to perform and comply with its obligations under the Financing Agreements, or (iii) the rights and remedies of the Agent or any Lender under this Agreement or any other Finance Agreement.

“Maturity Date” means each date set forth in Schedule II attached hereto; *provided*, however, that if any such date is not a Business Day, such Maturity Date shall be the Business Day immediately following such date, *provided*, further, that if such immediately following Business Day falls in the next calendar month, then such Maturity Date shall be the Business Day immediately preceding such date.

“Obligations” means any and all amounts owing to the Agent or any Lender pursuant to the terms of this Agreement and the other Financing Agreements, including all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against the Borrower in bankruptcy, whether or not allowed in such case or proceeding), fees, expenses, attorneys’ fees and any other sum chargeable to the Borrower under this Agreement or any of the other Financing Agreements.

“Overdue Rate” means, with respect to an amount that is overdue for payment, a fixed rate per annum equal to the sum of the Applicable Interest Rate as in effect on the due date of payment of such amount) plus [INSERT AMOUNT OF RATE IN WORDS] percent ([INSERT AMOUNT OF RATE IN NUMBERS] __%) per annum.

“Person” means any individual, firm, corporation, joint venture, partnership, association, sole proprietorship, unincorporated organization, trust, limited liability company, institution,

public benefit corporation or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

“Proposed Drawdown” has the meaning provided in Article 1.3 (*Drawdown Notice*).

[**“Required Lenders”** means, at any time, the Lenders having or holding at least [66 2/3]% of the sum of the (i) the Undrawn Commitments of all of the Lenders plus (ii) the aggregate of all outstanding Loans, at such time, *provided* that if there are no Undrawn Commitments and no Loans outstanding at such time, then the Lenders having or holding [66 2/3]% or more of the Total Commitment on the date of this Agreement.]

“Subsidiary” means, in relation to a Person (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation is at the time owned by such Person and/or one or more Subsidiaries of such Person, (ii) a trust or estate where such Person and/or one or more Subsidiaries of such Person directly or indirectly owns or controls more than 50% of the beneficial interest in such trust or estate, or (iii) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% equity interest at the time.

“Taxes” has the meaning provided in Article 3.4 (*Payments Made Free and Clear*).

[**“Tokyo Business Day”** means any day except Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions are authorized or required by law to close in Tokyo.]

“Total Commitment” means, at any time, the total sum of the Commitments of all of the Lenders.

“Total Undrawn Commitment” means, at any time, the total sum of the Undrawn Commitments of all of the Lenders.

“Undrawn Commitment” means, at any time and in relation to any Lender, the Commitment of such Lender at such time less the aggregate principal amount of all Loans made by such Lender.

“Yen” or **“JPY”** each means the lawful currency of Japan from time to time.

[**“Yen LIBOR”** means the interest rate per annum for Japanese Yen deposits for a [1/2/3/6]²² month period published or reported by the British Bankers Association as quoted on [INSERT PAGE REFERENCE] at or about 11:00 a.m. (London time), or the time after 11:00 a.m. (London time) as close as possible to 11:00 a.m. (London time) two London Business Days prior to the first day of the relevant Interest Period; *provided*, however, that in the event of an initial Interest Period for any Drawdown for which no percentage rate of interest per annum for deposits for a comparable period appears on [INSERT PAGE REFERENCE], “Yen LIBOR” shall mean such interest rate per annum that is reasonably decided upon by the Agent as the offered rate applicable for a drawdown in Yen for the relevant Loan in the London Interbank

²² To be adjusted according to monthly, bimonthly, quarterly and semiannual interest payment periods.

Market as of 11:00 a.m. (Tokyo Time) of the second London Business Day prior to the first day of the relevant Interest Period or the nearest time thereto.]]²³

["**Yen TIBOR**" means the interest rate per annum for Japanese Yen deposits for a [1/2/3/6]²⁴ month period published or reported by the Japanese Bankers Association as quoted on [INSERT PAGE REFERENCE] at or about 11:00 a.m. (Tokyo time), or the time after 11:00 a.m. (Tokyo time) as close as possible to 11:00 a.m. (Tokyo time) two Tokyo Business Days prior to the first day of the relevant Interest Period; *provided*, however, that in the event of an initial Interest Period for any Drawdown for which no percentage rate of interest per annum for deposits for a comparable period appears on [INSERT PAGE REFERENCE], "Yen TIBOR" shall mean such interest rate per annum that is reasonably decided upon by the Agent as the offered rate applicable for a drawdown in Yen for the relevant Loan in the Tokyo Interbank Market as of 11:00 a.m. (Tokyo Time) of the second Tokyo Business Day prior to the first day of the relevant Interest Period or the nearest time thereto.]]²⁵

Principles of Construction.

- (b) Any reference in this Agreement or any other Financing Agreement to a Financing Agreement shall include all appendices, annexes, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto.
- (c) Unless specified otherwise, all references in this Agreement to Articles, Schedules and Exhibits are to Articles, Schedules and Exhibits in or to this Agreement.
- (d) The words "hereof," "herein" and "hereunder" "hereto" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (e) The word "including" shall be construed without limitation.
- (f) Where the context so requires, words used in the singular shall be read as including the plural and *vice versa*.
- (g) Unless otherwise provided, any interest, fee, commission or other amount payable in respect of any period shall accrue from (and including) the first day of that period up to (but excluding) the last day of that period.
- (h) The headings of the several Articles and sub-articles of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

²³ Insert this bracketed language if a Yen LIBOR rate will be used.

²⁴ To be adjusted according to monthly, bimonthly, quarterly and semiannual interest payment periods.

²⁵ Insert this bracketed language if a Yen TIBOR rate will be used.

- (i) All accounting terms not specifically defined herein shall be construed in accordance with GAAP in conformity with those used in the preparation of the financial statement referred to in Article 5.3 (*Financial Statements; Financial Condition; Material Adverse Change; etc.*).

[Remainder of this page intentionally left blank.]

FORM OF DRAWDOWN NOTICE

[INSERT DATE]

[NAME OF AGENT], as Agent
for the Lenders parties to
the Loan Agreement
referred to below

[ADDRESS OF AGENT]

Attention : _____

Ladies and Gentlemen:

Reference is hereby made to the Yen Facility Loan Agreement, dated as of [INSERT DATE] among the undersigned, certain Lenders parties thereto, and you, as Agent for such Lenders (as amended from time to time, the "***Loan Agreement***"). The undersigned, [NAME OF BORROWER] hereby gives you notice, irrevocably, pursuant to Article 1.3 (*Drawdown Notice*) of the Loan Agreement, that the undersigned hereby requests a Drawdown under the Loan Agreement, and in that connection sets forth below the information relating to such Drawdown (the "***Proposed Drawdown***") as required by Article 1.3 (*Drawdown Notice*) of the Loan Agreement:

- (i) The date of the Proposed Drawdown is [INSERT DATE].
- (ii) The aggregate principal amount of the Proposed Drawdown is JPY [INSERT AMOUNT].
- (iii) The proceeds of the Proposed Drawdown shall be credited to the following account:

Bank Account Information

Bank/Branch:	[]
Swift Code:	[]
Account Name:	[]
Account Number:	[]
Favor:	[]
Ref:	[]

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Drawdown:

(A) the representations and warranties contained in Article 5 (*Representations and Warranties*) of the Loan Agreement are correct, before and after giving effect to the Proposed Drawdown and to the application of the proceeds thereof, as though made on and as of such date; and

(B) no Default or Event of Default has occurred and is continuing, or would result from such Proposed Drawdown or from the application of the proceeds thereof.

Unless otherwise defined herein, capitalized terms used in this Drawdown Notice have the meanings assigned to those terms in the Loan Agreement.

Very truly yours,

[NAME OF BORROWER]

By _____
Title:

FORM OF OPINION OF COUNSEL²⁶

[INSERT DATE]

[LIST OF LENDERS AS ADDRESSEES]

Ladies and Gentlemen:

We have acted as counsel for [NAME OF BORROWER], a corporation organized and existing under the laws of [INSERT NAME OF THE BORROWER'S COUNTRY] (the "**Borrower**") in connection with the execution and delivery of the following documents (collectively, the "**Financing Agreements**");

- (a) the Loan Agreement, dated [INSERT DATE] among the Borrower, the Lenders parties thereto (the "**Lender**") and [NAME OF AGENT], as Agent (the "**Agreement**");
- (b) the fee letter, dated [INSERT DATE] between the Borrower and the Agent; and
- (c) [LIST ANY OTHER DOCUMENTS WHICH HAVE BEEN INCLUDED AS FINANCING AGREEMENTS IN THE LOAN AGREEMENT UP TO THE DATE OF THIS OPINION].

This opinion is being delivered at the request of the Borrower pursuant to Article 4.1(c)(i) (*Conditions Precedent to the Initial Drawdown*) of the Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

As such counsel and for purposes of our opinions set forth below, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or appropriate as a basis for the opinions set forth herein. In addition, we have made such investigations of law as we have deemed relevant and necessary as a basis for the opinions expressed below.

In such examination and in rendering the opinions expressed below, we have assumed: (i) the due authorization, execution and delivery of each Financing Agreements (other than the due authorization, execution and delivery of the Financing Agreements by the

²⁶ This is a form legal opinion from Borrower's counsel with respect to both the Borrower's Country and Japan, and sets forth the kinds of opinions that should be provided by such counsel with respect to the law of Borrower's Country and Japan. If the Borrower has retained separate counsels with respect to Japanese law and Borrower's Country's law, two separate legal opinions based on this form will need to be delivered.

Borrower); (ii) the genuineness of all signatures on all documents submitted to us; (iii) the authenticity and completeness of all documents, corporate records, certificates and other instruments reviewed by us; (iv) that photocopy, electronic, certified, conformed, facsimile and other copies of original documents, corporate records, certificates and other instruments reviewed by us conform to such original documents, records, certificates and other instruments; (v) the legal capacity of all individuals executing documents (other than those executing for the Borrower); and (vi) that the Financing Agreements are the valid and binding obligations of each of the parties thereto (other than the Borrower), enforceable against such parties (other than the Borrower) in accordance with their respective terms and have not been amended or terminated orally or in writing except as disclosed to us.

Based upon the foregoing, and in reliance thereon, and subject to the limitations, qualifications and exceptions set forth herein, we are of the following opinion:²⁷

1. Each of the Borrower and its Subsidiaries (i) is a duly organized, validly existing [INSERT TYPE OF ENTITY] in good standing under the laws of the jurisdiction of its formation, (ii) is duly qualified and in good standing as a foreign corporation or company in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed, and (iii) has the power and authority to own its property and assets and to transact the business in which it is engaged.

2. The Borrower has the power and authority to enter into and carry out its obligations under the Financing Agreements, and the Borrower has taken all necessary action on its part to be taken in order to authorize the execution, delivery, consummation and performance of the Financing Agreements. The Borrower has duly executed and delivered each of the Financing Agreements.

3. The execution and delivery by the Borrower of the Financing Agreements, the consummation of the transactions contemplated therein and the performance by it of its obligations thereunder will not (i) cause the Borrower to violate any provision of its charter, bylaws or any other constituent documents, (ii) cause the Borrower to violate any law, rule or regulation applicable to it, (iii) cause the Borrower to violate any order, judgment or decree of any governmental body or authority which by its terms names and is applicable to the Borrower and which is known to us, (iv) constitute a breach of, constitute a default under or require any payment to be made under any contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument binding on or affecting it, its Subsidiaries or any of its or their properties, or (v) result in or require the creation or imposition of any Lien upon any of the properties of it or any of its Subsidiaries.

4. Each of the Financing Agreements constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

²⁷ For paragraphs in the opinion that cover the same matters as the representations, use, to the extent possible, the same language as the representations. In general, the opinion covers only legal matters and, therefore, does not cover matters such as the financial statements that are the subject of a representation. In addition, the opinion contains “knowledge” exceptions where appropriate.

5. The obligations and liabilities of the Borrower under the Financing Agreements are unconditional and general obligations of the Borrower and rank at least *pari passu* with all other present or future unsecured and unsubordinated Indebtedness of the Borrower.

6. To our knowledge, [other than as disclosed on Schedule 5.4 of the Agreement,] there is no action, suit or proceeding at law or in equity, or by or before any governmental or regulatory body or agency or any arbitration board or panel, pending or threatened against the Borrower (i) with respect to any Financing Agreement or (ii) that are reasonably likely to cause a Material Adverse Change.

7. All authorizations, licenses, approvals or consents of, or registrations, recordations or filings with, or exemption by, the Borrower's Country and Japan, or of any subdivision, agency, department, or commission thereof or therein which is reasonably necessary or advisable, for (a) the execution, delivery or performance of the Agreement or any other Financing Agreement or any agreement or instrument required thereunder, (b) the legality, validity, enforceability and admissibility in evidence thereof, (c) the borrowings under the Agreement and (d) the payment by the Borrower of all sums which it may be liable to pay under the Agreement or any other Financing Agreement or any agreement or instrument required thereunder, have been duly effected, completed and/or obtained and are in full force and effect.

8. The Borrower and each of its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental authorities, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls).

9. In any proceedings in the Borrower's Country to enforce the Financing Agreements, the choice of Japan law as the governing law thereof will be recognized and such law will be applied. The consent by the Borrower in Article 12.9 (*Governing Law; Jurisdiction*) of the Agreement to the jurisdiction of the Tokyo District Courts and the appointment by the Borrower of the agent for service of process in Tokyo pursuant to Article 12.9 (*Governing Law; Jurisdiction*) of the Agreement are legal, valid, binding and enforceable in the Borrower's Country and any judgment obtained in Japan will be recognized and enforceable against the Borrower and its Assets in the Borrower's Country. Each of the Financing Agreements is in proper legal form under the laws of the Borrower's Country and is capable of enforcement in the courts of the Borrower's Country without further action on the part of the Agent or any Lender.

10. The Borrower is a legal entity with separate legal personality capable of being sued in its own name. It is subject to civil and commercial law with respect to its obligations under the Financing Agreements. The execution and delivery of the Financing Agreements constitute, and the Borrower's performance of and compliance with its obligations under the Financing Agreements will constitute, private and commercial acts rather than public or governmental acts. Neither the Borrower nor any of its Assets have any right of immunity from suit, execution, attachment prior to judgment, attachment in aid of execution or any other legal process with respect to its obligations under the Financing Agreements in any jurisdiction, including the Borrower's Country, except for immunities of

Assets attached to public concessions, which execution or attachment of such Assets are subject to legal restrictions.²⁸

We are licensed to practice law in [INSERT THE BORROWER'S COUNTRY] and Japan only and express no opinion as to the laws of any jurisdiction other than those of [INSERT THE BORROWER'S COUNTRY] and Japan.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose or relied upon by any other Person without our prior written consent. This opinion is limited to the specified legal issues expressly addressed herein, and no opinion is implied or may be inferred beyond the specified legal issues expressly addressed herein. This opinion is rendered to you as of the date hereof and is not to be deemed to have been reissued or updated by any subsequent delivery of a copy hereof. We assume no obligation to advise you or any other person hereafter with regard to any change after the date hereof in the circumstances or the law that may bear on the matters set forth herein even though the change may affect the legal analysis or a legal conclusion or other matters in this opinion letter.

Very truly yours,

²⁸ If the Borrower is required to provide a waiver of sovereign immunity in the Loan Agreement, an opinion as to the validity of such waiver should be included.

FORM OF OFFICER'S CERTIFICATE

[NAME OF BORROWER]

Officers' Certificate

I, [INSERT NAME OF CERTIFYING OFFICER], do hereby certify, pursuant to Article 4.1(c)(ii) (*Conditions Precedent to the Initial Drawdown*) of the Yen Loan Facility Agreement dated as of [INSERT DATE], among [NAME OF BORROWER], a [TYPE OF ENTITY] organized and existing under the laws of [NAME OF COUNTRY] (the “**Borrower**”), the Lenders party thereto and [NAME OF AGENT], as Agent (such Loan Agreement, as in effect on the date of this Officer's Certificate, being herein called the “**Loan Agreement**”), that, at and as of the date hereof:

1. I am the duly elected and qualified [INSERT TITLE]²⁹ of the Borrower.
2. Each of the below-named persons has been duly elected and qualified as, and currently holds, the office set opposite such person's name below, and the signatures below set opposite such persons' names are their genuine signatures.

Name ³⁰		Title		Signature

2. Each of the representations and warranties contained in Article 5 (*Representations and Warranties*) of the Loan Agreement is true and correct [in all material respects], both before and after giving effect to the Drawdown to be incurred on the date hereof and the application of the proceeds thereof [; provided that for purposes of this paragraph 2 of this Officer's Certificate, any qualification of a representation and warranty as to materiality shall be disregarded]³¹.

3. No Default or Event of Default has occurred and is continuing or would result from the Drawdown to be incurred on the date hereof or from the application of the proceeds thereof.

²⁹ Signatory must be an executive officer of the Borrower.

³⁰ Include name, office and signature of each officer who will sign any Financing Agreement, including the officer who will sign the certification at the end of this certificate.

³¹ If the first bracketed language will be used in any case where any representation and warranty is already subject to a materiality standard, the final bracketed phrase should also be added to avoid any issues with a “double materiality” standard for such representations and warranties for purposes of this Officer's Certificate.

4. Attached hereto as Exhibit A[-1] is a true and complete copy of the [Articles of Incorporation]³² of the Borrower as currently in effect and filed in [INSERT NAME OF APPLICABLE FILING OFFICE], including all amendments thereto to the date hereof[, and Exhibit A-2 is complete and correct English translation thereof].

5. Attached hereto as Exhibit B[-1] is a true and correct copy of the [Bylaws]³³ of the Borrower as currently in effect, including all amendments thereto to the date hereof[, and Exhibit B-2 is complete and correct English translation thereof].

6. Attached hereto as Exhibit C[-1] is a true and correct copy of resolutions duly adopted by the [Board of Directors] of the Borrower, such resolutions are currently in force and have not been revoked, modified, amended or rescinded[, and Exhibit C-2 is complete and correct English translations thereof].

7. No proceeding for the dissolution or liquidation of the Borrower is pending or, to my knowledge, being contemplated by or threatened against the Borrower.

Unless otherwise defined herein capitalized terms used in this Certificate have the meanings assigned to those terms in the Loan Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand this [INSERT NUMBER] day of [INSERT NAME OF MONTH], [INSERT YEAR].

[NAME OF AUTHORIZED OFFICER]

Name :

Title :

I, [INSERT NAME OF COUNTER-SIGNING OFFICER], do hereby certify that, at and as of the date hereof:

1. I am the duly elected and qualified [Secretary/Assistant Secretary] of the Borrower.

2. [INSERT NAME OF AUTHORIZED OFFICER SIGNING THE OFFICER'S CERTIFICATE ABOVE] is the duly elected and qualified [INSERT OFFICE OF AUTHORIZED OFFICER SIGNING THE OFFICER'S CERTIFICATE ABOVE] of the Borrower, and the signature above is such Person's genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand this [INSERT DAY NUMBER] day of [INSERT NAME OF MONTH], [INSERT YEAR].

³² Insert name of Articles of Incorporation or equivalent document.

³³ Insert name of Bylaws or equivalent document.

[NAME OF COUNTER-SIGNING OFFICER]

Name :

Title :

**FORM OF
ASSIGNMENT AND ACCEPTANCE AGREEMENT**

This Assignment and Acceptance Agreement (this “Assignment and Acceptance”) is dated as of [INSERT DATE].³⁴ Reference is made to the Yen Facility Loan Agreement dated [INSERT DATE] (as amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”; the terms defined therein, unless otherwise defined herein, being used herein as therein defined) among [NAME OF BORROWER], a [TYPE OF ENTITY] organized and existing under the laws of [NAME OF COUNTRY] (the “*Borrower*”), the Lenders party thereto, and [NAME OF AGENT] as Agent for the Lenders.

[Each “Assignor” referred to on Schedule 1 hereto (each, an “Assignor”) and each “Assignee” referred to on Schedule 1 hereto (each, an “Assignee”)/ The “Assignor” referred to on Schedule 1 hereto (the “Assignor”) and the “Assignee” referred to on Schedule 1 hereto (the “Assignee”) each] agrees severally with respect to all information relating to it and its assignment hereunder and on Schedule 1 hereto as follows:

Such Assignor hereby sells and assigns, without recourse except as to the representations and warranties made by it herein, to such Assignee, and such Assignee hereby purchases and assumes from such Assignor, an interest in and to such Assignor’s rights and obligations under the Loan Agreement as of the date hereof equal to the percentage interest specified in Schedule 1 hereto of all outstanding rights and obligations under the Loan Agreement. After giving effect to such sale and assignment, such Assignee’s Commitment and the amount of the Loans owing to such Assignee will be set forth on Schedule 1 hereto.

Such Assignor (i) represents and warrants that its name set forth on Schedule 1 hereto is its legal name, that it is the legal and beneficial owner of the interest or interests being assigned by it hereunder and that such interest or interests are free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, representations or warranties made in or in connection with any Financing Agreement or the execution, legality, validity, enforceability, genuineness of any Financing Agreement or any other document or instrument furnished pursuant thereto; and (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or the observation by the Borrower of any of its obligations under any Financing Agreement or any other document or instrument furnished pursuant thereto.

Such Assignee (i) confirms that it has received a copy of the Loan Agreement, together with copies of the financial statements referred to in Article 5 (*Representations and Warranties*) thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees

³⁴ This date is for reference purposes only. The Assignment Effective Date specified in Schedule 1 is the effective date of the assignment.

that it will, independently and without reliance upon the Agent, [any / the] Assignor or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Agreement; (iii) represents and warrants that its name set forth on Schedule 1 hereto is its legal name; (iv) confirms that it is an Eligible Assignee; (v) appoints and authorizes the Agent to take such action as agent on behalf and to exercise such powers and discretion under the Financial Agreements as are delegated to the Agent by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; (vi) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Loan Agreement are required to be performed by it as a Lender; and (vii) [INSERT ANY OTHER REQUIRED CONDITIONS, SUCH AS DELIVERY OF CERTAIN DOCUMENTS].

This Assignment and Acceptance is conditioned upon notice to the Agent and [the consent of]³⁵ the Borrower. [The execution of this Assignment and Acceptance by the Borrower is evidence of this consent.]³⁶

Following the execution of this Assignment and Acceptance, the [Assignor] [Assignee] will notify the Agent [and the Borrower]³⁷ of such assignment and deliver the executed original to the Agent for recording by the Agent. The effective date for this Assignment and Acceptance (the “**Assignment Effective Date**”) shall be the date of notice to the Agent [and the Borrower]³⁸, unless otherwise specified in Schedule 1 hereto.

Upon such notice to the Agent [and the Borrower]³⁹, as of the Assignment Effective Date, (i) such Assignee shall be a party to the Loan Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder, and (ii) such Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Agreement (other than rights and obligations under the Financing Agreements that are specified under the terms of such Financing Agreements to survive the payment in full of the obligations of the Lenders under the Financing Agreements to the extent any claim thereunder relates to an event arising prior to the Assignment Effective Date) and, if this Assignment and Acceptance covers all of the remaining portion of the rights and obligations of such Assignor under the Loan Agreement, such Assignor shall cease to be a party thereto.

Upon such notice to the Agent [and the Borrower]⁴⁰, from and after the Assignment Effective Date, the Agent shall make all payments under the Loan Agreement and the other Financing Agreements in respect of the interest assigned hereby (including all payments of principal, interest and commitment fees with respect thereto) to such Assignee. Such Assignor and such Assignee shall make all appropriate adjustments in payments under the Loan Agreement

³⁵ Use only if Borrower’s consent to assignment is required under Article 12.8(c)(ii).

³⁶ See footnote 35.

³⁷ Use if Borrower’s consent is not required.

³⁸ Use if Borrower’s consent is not required.

³⁹ Use if Borrower’s consent is not required.

⁴⁰ Use if Borrower’s consent is not required.

and the other Financing Agreements for periods prior to the Assignment Effective Date directly between themselves.

This Assignment and Acceptance and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the law of Japan.

This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Schedule 1 to the Assignment and Acceptance in [INSERT NUMBER] copies as of the date first above written.

Address: _____ [NAME OF ASSIGNOR]⁴¹

Attn: _____
(Tel) _____
(Fax) _____

By _____
Title: _____

[NAME OF ASSIGNEE]⁴²

Attn: _____
(Tel) _____
(Fax) _____

By _____
Title: _____

[The undersigned hereby consents, without any reservation or condition, to the assignments and assumptions of the interests pursuant to this Assignment and Acceptance.]⁴³

[NAME OF THE BORROWER]

Attn: _____
(Tel) _____
(Fax) _____

By _____
Title: _____

⁴¹ Add additional signature lines as required.

⁴² Add additional signature lines as required.

⁴³ Use if Borrower's consent is required.

Schedule 1
to
Assignment and Acceptance

Assignor[s]	[INSERT NAME OF ASSIGNOR]	[INSERT NAME OF ADDITIONAL ASSIGNOR AS NECESSARY] ⁴⁴	[INSERT NAME OF ADDITIONAL ASSIGNOR AS NECESSARY] ⁴⁵
Percentage Interest Assigned	%	%	%
Commitment Assigned	JPY	JPY	JPY
Outstanding Principal Amount of Loans Assigned	JPY	JPY	JPY
Principal Amount of Loans Payable to Assignor	JPY	JPY	JPY

Assignee[s]	[INSERT NAME OF ASSIGNEE]	[INSERT NAME OF ADDITIONAL ASSIGNEE AS NECESSARY] ⁴⁶	[INSERT NAME OF ADDITIONAL ASSIGNEE AS NECESSARY] ⁴⁷
Percentage Interest Assumed	%	%	%
Commitment Assumed	JPY	JPY	JPY
Outstanding Principal Amount of Loans Assumed	JPY	JPY	JPY
Principal Amount of Loans Payable to Assignee	JPY	JPY	JPY

⁴⁴ Remove this column if there is no additional Assignor.

⁴⁵ Remove this column if there is no additional Assignor.

⁴⁶ Remove this column if there is no additional Assignee.

⁴⁷ Remove this column if there is no additional Assignee.

COMMENTARY ON THE FORM OF YEN LOAN FACILITY AGREEMENT

The following commentary accompanies the *Form of Yen Loan Facility Agreement* (the “Form Loan Agreement”) and provides a brief explanation of the text and/or purpose of certain provisions of the Form Loan Agreement. The Form Loan Agreement also contains footnotes that provide additional or alternative wording or provisions, which may be included as deemed appropriate by the user. Capitalized terms that are used in this commentary have the meanings given them or referred to in Exhibit A to the Form Loan Agreement.

The provisions of the Form Loan Agreement reflect, in general, customary practice and language typically found in international unsecured syndicated loan transactions. Hence, the Form Loan Agreement is intended only to serve as guideline for formulating and preparing a definitive loan agreement, with the understanding that any particular loan transaction will present unique issues and negotiating positions and certain provisions or wording of the Form Loan Agreement may not be appropriate or relevant for a particular loan transaction.

No representation or warranty is made, and no responsibility is undertaken, as to the suitability, effectiveness, adequacy or completeness of, or standards reflected in, the Form Loan Agreement. The user is advised to obtain the services and advice of legal counsel and other advisers in using the Form Loan Agreement and preparing any definitive agreement for a loan transaction.

Article	Title	Comment
	Parties	This section identifies the parties to the Form Loan Agreement. Simple loan agreements may have only two parties, the Borrower and the Lender. Syndicated loan agreements with multiple Lenders may include as parties one or more agents for the Lenders, to simplify payments and notices to and from the Lenders, as well as enforcement and other collective actions by Lenders. (See the discussion of Agents in the comments to Article 11 (<i>The Agent</i>).)
	Definitions	The Form Loan Agreement uses certain terms that are capitalized (<i>i.e.</i> , words that have an initial capital letter). These terms are given a defined meaning and collected in one place in Exhibit A at the end of the Form Loan Agreement, which sets forth the

Article	Title	Comment
		<p>definition of each term or reference to the definition of such term in the text of the Form Loan Agreement for easy reference. Using defined terms can help improve readability of the Form Loan Agreement by avoiding the need to describe often-used concepts repeatedly and by incorporating related or complex concepts into a single term.</p>
ARTICLE 1	MAKING OF AND TERMS OF LOANS	
1.1	Loans	<p>Each Lender’s obligation to make Loans to the Borrower is several (and not joint with any other Lender), such that it is independent of any other Lender’s obligation to fund its own Loans.</p> <p>Each Lender agrees to fund up to a certain amount of Loans to the Borrower. This amount is the “Commitment” of such Lender. If a Lender (the “failing Lender”) fails to make its Loan, no other Lender is required to increase its own Commitment to make up for any shortfall of the failing Lender.</p> <p>The Loans are not “revolving” loans, and accordingly, the Borrower may not reborrow amounts of the Loans that it has repaid to the Lenders. The Borrower may request the funding of Loans, and the Lenders are obligated to fund the Loans (subject to the satisfaction of the conditions precedent), only during the Availability Period.</p> <p>At the end of the Availability Period, each Lender’s Commitment expires, any unused portion of the Commitment at the end of the Availability Period time is no longer available to the Borrower to draw upon for Loans, and the Lender has no obligation to advance Loans from such unused portion.</p>

Article	Title	Comment
1.2	Fees	<p>The Borrower pays a Commitment Fee based on the amount of the aggregate Commitments of all Lenders that is unused at the end of each day. Certain other fees may also be provided for either in the Form Loan Agreement itself or in one or more separate “fee letter” agreements between the Borrower and, for example, the Agent, an arranger or other person involved with the Form Loan Agreement.</p>
1.3	Drawdown Notice	<p>This article describes the procedures for the Borrower request to make a drawdown of Loans. The Borrower must deliver a Drawdown Notice to the Agent sufficiently in advance of the borrowing so that the Agent may distribute it to the Lenders and the Lenders may arrange funding of their Loans on the requested Drawdown Date. Minimum amounts of Drawdowns are specified for administrative purposes.</p> <p>The concept of a “Business Day” is important in TIBOR and similar transactions, because funding arrangements for TIBOR advances can be made only on days on which the TIBOR market is functioning in Tokyo and London and on which the Lenders are open for business in the place where the payment is to be made to or received from the Borrower. Thus, Drawdowns and payments may be made only on Business Days. (See also the discussion of Article 1.7 (<i>Break Funding Costs</i>).)</p>
1.4	Disbursement by Lenders	<p>All payments between the Borrower and the Lenders flow through the Agent. The Lenders are required to make all payments to the Agent, the Agent is required to make all payments to the Borrower, and the Borrower is required to make all payments to the Agent for the account of the Lenders (see Article 2.4 (<i>Procedure for Payment by the Borrower</i>)) in immediately available</p>

Article	Title	Comment
		<p>funds so that each party can apply or transfer the funds on the same day.</p> <p>The Lenders are required to make funds available to the Agent at the Lender's Payment Office, and the Agent in turn makes such funds available to the Borrower. All Loans are subject to satisfaction of each of the conditions precedent to making such Loans set forth in Article 4 (<i>Conditions Precedent</i>).</p>
1.5	Scheduled Interest	<p>The Applicable Interest Rate payable on Loans is defined in Exhibit A as Euro Yen TIBOR, Yen TIBOR or Yen LIBOR plus the Applicable Margin. Under the funding and interest conventions applicable to TIBOR and similar rates, interest is payable in arrears on each Interest Payment Date, which occurs at the end of each Interest Period.</p>

Article	Title	Comment
1.7	Break Funding Costs	<p>Lenders traditionally fund their Loans by obtaining deposits of matching amounts and durations of Interest Periods in the TIBOR or other interbank markets. These deposits are passed on to the Borrower as Loans, and payments of interest and principal by the Borrower are passed on (less margins) by the Lender to the depositor of the funds.</p> <p>If the Borrower fails to make a Drawdown, or repays or prepays a Loan other than the last day of an Interest Period, or defaults in any payment of interest or principal, in any case resulting in a payment other than on the last day of an Interest Period, then the amount of interest paid by the Borrower on its Loan would not equal the corresponding amount of interest on the Lender must pay on its funding deposit.</p> <p>This article provides that the Borrower reimburse the Lender for its additional costs in any such event. The Form Loan Agreement proposes to limit such costs to the loss of margin represented by the difference between the Applicable Interest Rate and the rate the Lender could obtain by reinvesting the funds in an alternate investment.</p>
ARTICLE 2	PAYMENTS AND REPAYMENTS	
2.2	Voluntary Prepayments	<p>The Borrower is permitted to prepay the Loans at any time provided that the prepayment is at least a certain amount, and as an optional requirement a multiple thereof. The prepayment may be either with or without penalty or premium. Also, the footnote to this article provides alternate text that may be used if prepayments are subject to the consent of the Agent, each of the Lenders or only the Required Lenders. The Borrower may</p>

Article	Title	Comment
		also be required to reimburse the Lenders for any break funding costs under Article 1.7(b) (<i>Break Funding Costs</i>).
2.3	Mandatory Prepayment	The Parties may wish to specify certain events in which all or some specified principal amount of the Loans are repayable prior to their stated maturity. The parties may prefer to call such events “mandatory prepayment events” rather than Events of Default, the occurrence of which events may result in acceleration of the Loans and may trigger “cross-defaults” in other agreements. (See the discussion of cross-defaults under Article 10.1(d) (<i>Events of Default</i>).)
ARTICLE 3	INCREASED COSTS; ILLEGALITY; TAXES	
3.1	Increased Costs; Capital Adequacy	If as a result of changed laws or regulations any Lender suffers any increased costs in making or maintaining any Loans outstanding (for example, by reason of an increase in the amount of required reserves against the Loans the Lender must maintain), the Borrower is required to either reimburse the affected Lender(s) for these costs or prepay the Loans subject to the requirements of Article 2.2 (<i>Prepayments</i>).
3.2	Market Interruption	If for any reason the interbank market is not functioning adequately to determine the Applicable Interest Rate, the Borrower’s ability to make Drawdowns is temporarily suspended and the Form Loan Agreement proposes that the rate of interest applicable to outstanding Loans is determined by the Agent.

Article	Title	Comment
3.3	Illegality or Impracticality of Loan	If any Lender determines that it is illegal or impractical for it to continue to make Loans, it is released from its Commitment, and the Borrower is required to prepay such Lender in full on its demand. The Borrower would still be liable for any breakage costs under Article 1.7(b) (<i>Break Funding Costs</i>).
3.4	Payments Made Free and Clear of Setoffs, Taxes, etc.	This article requires all payments by the Borrower to be made without deduction for any amounts on account of setoff, Taxes or similar matters.
3.5	Gross-Up for Taxes	<p>If any taxes are withheld from any payment made by the Borrower, the Borrower is required to “gross-up” the payment sufficiently so that the Lenders receive after taxes the full amount to which they were originally entitled.</p> <p>Note, that income taxes assessed on the Agent or any Lender are their responsibility and not required to be grossed-up by the Borrower.</p>
ARTICLE 4	CONDITIONS PRECEDENT	The Lenders have an obligation to fund the Loans upon request made by the Borrower pursuant to the terms of the Form Loan Agreement. The Lenders are provided certain protections by requiring the satisfaction of conditions precedents before they are required to make a Loan.
4.1	Conditions to the Initial Drawdown	The conditions precedent to the making of Loans are divided into two sections. The conditions precedent in this article apply only to the first Drawdown, and do not apply to subsequent Drawdowns. The conditions precedent in Article 4.2 (<i>Conditions Precedent to Each Drawdown</i>) apply to the first Drawdown and each subsequent Drawdown.

Article	Title	Comment
(a)	Execution and Delivery of the Financing Agreements	Although faxed signature pages are sometimes accepted, original signed signature pages should be obtained whenever possible.
(b)	Copies of governmental approvals for Borrower	Although the Borrower represents and warrants to the Lenders that all necessary governmental approvals have been obtained (see Article 5.2 (<i>Governmental Consents and Actions</i>)) and the Lenders receive an opinion of the Borrower's counsel to that effect (see Article 4.1(c)(i) (<i>Conditions Precedent to the Initial Drawdown</i>)), Agents and Lenders may also request copies of the actual permits.
(c)(i)	Opinion of the Borrower's counsel	<p>The purpose of the opinion of Borrower's counsel is to provide the Lenders with the judgment of a professional attorney that the Borrower's obligations under the Form Loan Agreement are enforceable under the laws of Japan and, to the extent applicable to the transaction, other jurisdictions. The opinion also provides some comfort to the Lenders that the Borrower has considered the legal issues involved in the Form Loan Agreement in a prudent fashion, and other matters related to the Form Loan Agreement.</p> <p>Opinions may be split between inside counsel, who would give corporate authorization opinions, for example, and outside counsel who would focus on legal structure and enforceability issues.</p> <p>Opinions of local counsel in jurisdictions other than Japan may be required in cases where permits must be issued by a non-Japanese governmental agency, the Borrower is organized or domiciled outside of Japan or other relevant circumstances.</p>

Article	Title	Comment
(d)(ii)	Officer's Certificate	The Officer's Certificate is an element of the Lenders' due diligence in making the Loans to the Borrower. It typically includes a number of items related to corporate authorizations of the Borrower and related matters, all of which are personally certified by an authorized officer of the Borrower.
4.2	Conditions Precedent to Each Drawdown	The conditions precedent in this article are applicable to all Drawdowns, and focus on confirming for the Lenders that the Borrower's financial, legal or business condition has not significantly changed from the time at which the Lenders signed the Form Loan Agreement and agreed to extend credit under its terms.
(b)	Representations and Warranties	<p>This article makes it a condition precedent to each Drawdown that the representations and warranties in Article 5 (<i>Representations and Warranties</i>) are true and complete on the date of the Drawdown, so that if one is not true and correct on that date, the Lenders would not be obligated to make the proposed Drawdown.</p> <p>The Form Loan Agreement includes the phrase "[in all material respects]" as alternate language for this condition precedent. Note, that if certain representations and warranties in Article 5 already include a "materiality" standard, then this article should not include the bracketed language as a second "materiality" qualification or, if this language is included, it should not apply to those specific representations and warranties that already include a materiality standard, by using the bracketed text at the end of this article. Otherwise, this article might create a "double materiality" standard, as follows:</p> <p>If (x) a representation and warranty in</p>

Article	Title	Comment
		<p>Article 5 is required only to be “materially” true, (y) such representation and warranty is not materially true, but (z) the degree of incorrectness of such representation and warranty is not itself “material”, then it may be possible to argue that even though the original representation and warranty is not materially correct, the amount or degree by which it is not correct is itself not material so that this condition precedent would be satisfied in that case.</p> <p>For example, assume a representation and warranty states that there is “no material litigation” involving the borrower and, based on the size of the borrower, a “material” litigation would be a matter in which JPY 1,000,000 is in dispute. If the borrower is a party to a litigation in which JPY 1,100,000 is in dispute, the representation and warranty would not be correct (based on the JPY 1,000,000 materiality standard), but a court might take the view that the original representation and warranty had already “built in” permission for litigations up to JPY 1,000,000, and that the condition precedent would be met if <u>amount by which the materiality standard was exceeded</u>, i.e., JPY 100,000, was not itself material.</p>
ARTICLE 5	REPRESENTATIONS AND WARRANTIES	<p>In this article, the Borrower makes representations and warranties with respect to those facts and circumstances the Lenders relied upon in entering into the Form Loan Agreement and agreeing to make the Loans to the Borrower under the terms and conditions in the Form Loan Agreement.</p> <p>It is a condition precedent to each Drawdown that all of the representations and warranties are correct and complete on the date of the Drawdown, subject to any “materiality” qualifiers as discussed in the</p>

Article	Title	Comment
		<p>comments to Article 4.2(c) (<i>Conditions Precedent to Each Drawdown</i>).</p> <p>In addition, if the Borrower makes a representation and warranty to the Lenders that is not true on the date made, subject to any “materially” qualifiers as discussed in the comments to Article 10(b) (<i>Representations, etc.</i>), it would constitute an Event of Default under Article 10 (<i>Events of Default</i>) and permit the Lenders to accelerate the Loans.</p> <p>The representations and warranties also serve an additional function as information disclosures. If any representation and warranty would not be correct as written, the Borrower must disclose the matters covered that are inconsistent with the representation and warranty and obtain the Lenders’ consent to specifically exclude those matters from the relevant representation and warranty. The matters excluded may either be described in the body of the presentation and warranty or listed in a separate schedule of excluded matters.</p> <p>Note, that the representations and warranties in Article 5 (<i>Representations and Warranties</i>) and the covenants in Article 6 (<i>Information Covenants</i>), Article 7 (<i>Affirmative Covenants</i>) and Article 8 (<i>Negative Covenants</i>) of the Form Loan Agreement are generally worded to include the Borrower’s Subsidiaries in the matters covered. However, if the Borrower has no Subsidiaries or the Lenders otherwise do not deem it important as a credit matter to include Borrower’s Subsidiaries in these articles for any particular transaction, the wording may be revised to cover only the Borrower.</p>
5.1	Corporate Status;	In clauses (a) and (b) of this article, the Borrower represents and warrants the

Article	Title	Comment
	Power and Authority	<p>accuracy of certain matters that are fundamental requirements of the Lenders in making the Loans – the Borrower is a legal entity with the power and authority to enter into the Form Loan Agreement and perform its obligations thereunder.</p> <p>“Good standing” means that the Borrower has paid all taxes and made all filings and registrations required by its jurisdiction of incorporation to maintain its status as a legal entity under the laws of that jurisdiction. (This concept may not be applicable in all jurisdictions.)</p> <p>The final sentence of clause (c) states that the Form Loan Agreement is “enforceable” against the Borrower in accordance with its terms. This does not necessarily mean that a court would order a Borrower to specifically perform any particular obligation under the Form Loan Agreement the Borrower failed to perform. Rather, it means that if the Borrower does breach the agreement, the Lenders would have the remedies provided for in the Form Loan Agreement, such as acceleration of maturity, etc., and other claims under applicable law such as a claim for monetary damages.</p>
5.3	Financial Statements; Financial Condition; Material Adverse Change; etc.	<p>In this article, the Borrower confirms to the Lenders that its financial statements have been prepared in accordance with GAAP. This is a fundamental credit matter for the Lenders, as the information in the Borrower’s financial statements is a key factor in their decisions to extend credit. As worded, the representation covers not only audited financial statements, but all other financial statements provided by the Borrower to the Lenders including all unaudited and interim financial statements. The Parties may also agree to limit coverage to only audited financial statements and specified interim financial</p>

Article	Title	Comment
		<p>statements.</p> <p>This article also includes the Borrower's representation that there has been no Material Adverse Change, which is defined in Exhibit A to mean any material adverse change in the "business, operations, Assets, condition (financial or otherwise) or prospects of the Borrower", often referred to as the "no-MAC" clause. This provision enables the Lenders to avoid making a Loan to the Borrower if the Borrower's financial condition or operations are materially worse than they were at the date specified in the representation.</p>
5.6	Payment Obligations <i>Pari Passu</i>	In a typical unsecured and unsubordinated loan transaction, the Lenders will require that no other unsecured indebtedness ranks senior to the Borrower's payment obligations under the Form Loan Agreement.
5.7	Tax Returns and Payments	In many jurisdictions, tax obligations and liens are required to be paid before other general unsecured indebtedness. Therefore, the Borrower represents and warrants that it has filed all returns and paid all taxes except those it is contesting by appropriate proceedings with adequate reserves maintained.
5.8	Compliance with Law	Violations of laws may give public authorities the right to take actions, including assessing substantial financial penalties or restricting operations, which could affect the credit of the Borrower.
5.9	Immunity	Under the laws of many countries, a sovereign entity will be immune from (<i>i.e.</i> , not subject to) the jurisdiction of the courts of that jurisdiction unless it has specifically waived its immunity and consented to such jurisdiction. The effect of this immunity

Article	Title	Comment
		would be that the Lenders would not be able to enforce the provisions of the Form Loan Agreement against the sovereign entity in the courts of the country in question. Therefore, the Form Loan Agreement includes a specific representation by the Borrower that neither it nor any of its Assets is entitled to any such immunity.
5.11	Enforcement in the Borrower's Country	The Borrower consents in Article 12.9 (<i>Governing Law; Jurisdiction</i>) to the application of Japanese law and the jurisdiction of the Tokyo District Courts for the interpretation and enforcement of the Form Loan Agreement. However, any judgment that is obtained by the Lenders in the Japanese courts may require enforcement action against the Borrower or its Assets in the Borrower's Country. Therefore, the Lenders request confirmation from the Borrower that any such judgment obtained in the Japanese courts, and the Form Loan Agreement itself, can be enforced in the courts of the Borrower's Country.
[5._]	[Subsidiaries]	This optional representation and warranty may be included for a Borrower with material Subsidiaries where the Lenders are concerned about the ownership and control of each one for purposes of, among other things, determining dividend rights and contributions to the Borrower's earnings, potential liabilities and related matters.
[5._]	[Transactions with Affiliates]	This optional representation and warranty may be added if the Lenders seek assurance that the Borrower is dealing with its Affiliates in an arm's-length manner and not, for example, being underpaid in related party transactions in order to subsidize or support the business of an Affiliate that may not be contributing to the Borrower's income.

Article	Title	Comment
ARTICLE 6	INFORMATION COVENANTS	In this article, the Borrower agrees to provide the Lenders with a variety of financial and other information which the Lenders will use to monitor the Borrower's business and financial condition.
ARTICLE 7	AFFIRMATIVE COVENANTS	Affirmative covenants (what the Borrower agrees to perform or comply with during the term of the loan) and negative covenants (what the Borrower agrees to <i>not</i> conduct or permit to occur) help assure the Lenders that the Borrower's business profile will not be significantly changed in a manner that may result in a Material Adverse Change.
7.3	Compliance with Laws	See the discussion of the comparable representation and warranty under Article 5.8 (<i>Compliance With Law</i>).
7.4	Taxes	See the discussion of the comparable representation and warranty under Article 5.7 (<i>Tax Returns and Payments</i>).
7.7	[Performance of Contracts]	The creditworthiness of the Borrower may depend upon its ability to obtain certain supplies or sell products or services to a particular customer or offtaker under long-term contracts.
7.8	[Transactions with Affiliates]	See the discussion of the comparable optional representation and warranty under Article [5._] (<i>Transactions with Affiliates</i>).
7.12	Payment Obligations <i>Pari Passu</i>	See the discussion of the comparable representation and warranty under Article 5.6 (<i>Payment Obligations Pari Passu</i>).

Article	Title	Comment
ARTICLE 8	NEGATIVE COVENANTS	While affirmative covenants are generally things that good corporate managers would ordinarily do in any event, negative covenants are more directly related to the Borrower's credit and typically provide clear restrictions on the Borrower's activities.
8.1	Conduct of Business	The Lenders do not want the Borrower to engage in any business the Borrower may not be familiar with or may entail greater risks than its current business. This type of covenant restricts diversification without specifically limiting acquisitions unless the Parties wish to include a separate negative covenant concerning acquisitions.
8.3	Mergers, Consolidations	The Lenders wish to be assured that the Borrower will continue to be the same or substantially the same entity to which they made the initial Loans.
8.4	Sale of Assets	For reasons similar to the negative covenant against mergers, the Lenders will also want to restrict the Borrower from sales of Assets, subject to certain exceptions.
8.6	Indebtedness	The Lenders wish to restrict the Borrower's ability to incur additional indebtedness to amounts it can reasonably repay. A general "basket" amount may also be set, which permits the Borrower to incur additional indebtedness up to a certain limit without specifying the kind of debt.
8.7	Liens	The "negative pledge" clause prevents the Borrower from incurring liens on its Assets in favor of third-party creditors, which may give such creditors priority over the Lenders with respect to the secured assets in a workout or bankruptcy proceeding for the Borrower.

Article	Title	Comment
8.8	Other Agreements	The Lenders would not want the Borrower to breach any other agreement by performing its obligations under the Form Loan Agreement. This could put the Borrower in default under the other agreement and possibly give third party creditors rights to take enforcement actions against the Borrower.
ARTICLE 9	FINANCIAL COVENANTS	In order to monitor and manage the Borrower's financial condition, the Form Loan Agreement imposes a number of financial covenants on the Borrower.
ARTICLE 10	EVENTS OF DEFAULT	This article describes the circumstances in which the Lenders have the right to declare the Loans immediately due and payable, terminate their Commitments and exercise their remedies against the Borrower under the Form Loan Agreement and applicable laws.
10.1	Events of Default	This article describes each of the Events of Default. Article 10.2 (<i>Remedies</i>) prescribes the Lenders' contractual remedies when an Event of Default occurs.
(a)	Payments	The Borrower is allowed a two (2) day grace period for any payment default.
(b)	Representations, etc.	It is an Event of Default if any representation and warranty is inaccurate in any material respect when made. "Double materiality" may be an issue in determining whether an Event of Default has occurred under this article in a manner similar to the "double materiality" standard that may be an issue in determining whether the condition precedent in Article 4.2(b) (<i>Conditions Precedent to Each Drawdown</i>) has been satisfied (see the discussion of this topic in the comments to Article 4.2(b)). To avoid this issue in this article, if any of the individual representations and

Article	Title	Comment
		<p>warranties in the Form Loan Agreement includes a materiality standard the indicated bracketed language in this article should be used.</p> <p>Grace or cure periods are typically not provided for breach of a representation and warranty, since a representation and warranty is generally a statement of fact that cannot be “cured” if not true.</p> <p>However, cure periods are sometimes negotiated for breaches of representations and warranties which the Parties agree can be “cured”. For example, breach of a representation and warranty that no liens exist on the Borrower’s Assets may be cured by paying off the underlying debt and causing the lien to be removed. The relevant bracketed language in this article may be used to permit such cures.</p>
(c)	Covenants	<p>Covenant breaches are usually provided with cure periods, subject to exceptions that generally include payment defaults (which are treated separately), negative covenants (since these tend to be the more important obligations of the Borrower), and financial covenants (since these are generally discovered or reported significantly after the fact and so may have been in existence for some time making a cure difficult or impossible at that point).</p>
(d)	Cross-Default Under Other Indebtedness	<p>It is an Event of Default if the Borrower defaults under some other indebtedness, even though it may be fully complying with its obligations under the Form Loan Agreement. This helps to prevent the Lenders from being placed at a disadvantage to creditors under the other (defaulted) agreement, by among other things, permitting the Lenders to accelerate the maturity of the Loans if the Borrower goes into a bankruptcy or insolvency</p>

Article	Title	Comment
		proceeding as a result of the other default.
(f)	Bankruptcy	<p>This article provides that if the Borrower files for bankruptcy or takes other actions to protect itself from creditors, or admits that it cannot pay its debts, an Event of Default occurs immediately. However, if a creditor of the Borrower starts “involuntary” bankruptcy proceedings against the Borrower, an Event of Default typically occurs only if those involuntary proceedings are not dismissed within a specified period of time (usually 60 or 90 days).</p> <p>The last clause creates an Event of Default even prior to the time the Borrower actually files for bankruptcy, if its board of directors (or similar body) authorizes any such action. This clause is written to provide the Lenders with as much protection or leverage as possible in the event the Borrower is contemplating or actually authorizes a bankruptcy proceeding, by creating an automatic Event of Default (and rights of setoff) early in the process.</p> <p>Note, however, that under U.S. and certain other bankruptcy regimes, an “automatic stay” goes into effect immediately when the Borrower files for bankruptcy with the court. The automatic stay prevents creditors from taking any action (such as setoff) directly against the assets of the bankrupt party until the bankruptcy is settled. Creditors may, however, demand payments from and exercise rights of setoff against guarantors or security provided by third parties that are not also in bankruptcy proceedings.</p>

Article	Title	Comment
(h)	Attachments	This clause permits the Lenders to take action when an order for attachment is first issued in favor of another creditor. This may permit the Lenders to set off against the Borrower's funds before the judgment creditor is able to execute the attachment order on the Borrower's Assets.
(i)	Enforceability	If any legal issue arises that brings into question the enforceability of the Financing Agreements, or if the Borrower challenges such enforceability, an Event of Default occurs.
(f)	Material Agreements	This clause is similar to the cross-default for financial indebtedness under Article 10.1(d) (<i>Cross-Default Under Other Indebtedness</i>), and permits cross-defaults to other important agreements of the Borrower if breach of any of those agreements would be a significant credit issue for the Lenders.
(k)	Material Adverse Change	The representation and warranty in the last sentence of Article 5.3 (<i>Financial Statements; Financial Condition; Material Adverse Change; etc.</i>) that no Material Adverse Change has occurred is made only at certain limited times, which are the dates of Drawdowns during the Availability Period. If a Material Adverse Change occurred at some other time, however, it would not be a breach of that representation and warranty so no Event of Default would occur and the Lenders would have no right to take any action against the Borrower. This article fills in this "gap" by making it an Event of Default if a Material Adverse Change occurs at any time, which gives the Lenders an immediate right to take action to correct the situation.

Article	Title	Comment
(1)	Change of Control	Especially in small, closely held companies (and occasionally in larger companies), ownership and control of the Borrower are important credit matters for the Lenders. This article provides that it is an Event of Default if ownership and control of the Borrower changes, which gives the Lenders the option to accelerate and/or restructure the Loans in view of the new ownership.
10.2	Remedies	<p>If an Event of Default occurs, the Lenders have a choice of remedies: (i) terminate the Commitments; (ii) as a separate remedy, accelerate the Loans; and (iii) other remedies under applicable laws, such as foreclosure on collateral, demands under guarantees, setoff against deposits, obtaining judgment against the Borrower for the amount of the debt due and enforcing the judgment, etc. As noted above, if the Borrower is in bankruptcy or insolvency proceedings, remedies against the Borrower itself may be limited, but action may still be taken against any third parties not subject to bankruptcy proceedings who may have provided some credit support for the Borrower.</p> <p>Remedies may be exercised by the Agent collectively on behalf of all of the Lenders if directed to do so by the Lenders or the Required Lenders, as applicable. The Agent and any Lender may also separately enforce their individual claims against the Borrower.</p>
ARTICLE 11	THE AGENT	This article describes the rights and obligations of the Agent in relation to the Lenders. The Agent is usually one of the Lenders and acts for the syndicate to help centralize administration of the credit.
11.3	Exclusion of Liability	This provision describes the standards of care and certain matters for which the

Article	Title	Comment
		<p>Agent is specifically not responsible. Clause (a) provides that the Agent is not liable to the other Lenders for its acts or omissions under the Financing Agreements except for its own gross negligence or willful misconduct. This is an important protection for the Agent and makes clear that it is not liable under the stricter standard of “ordinary” negligence. Clauses (b) and (c) state that the Agent is not responsible for the Borrower’s actions or information or the enforceability of any of the Financing Agreements.</p>
11.4	No Obligations to Monitor	<p>Similar to Article 11.3 (<i>Exclusion of Liability</i>), this provision helps to protect the Agent from any obligation to the Lenders to determine whether the Borrower is complying with its obligations under the Financing Agreements.</p>
11.5	Reliance	<p>The Agent:</p> <ul style="list-style-type: none"> • is not required to investigate the genuineness of any document or signature it believes to be correct; • is permitted to refuse to take any action unless the Required Lenders affirmatively direct it to take such action or it is indemnified to its satisfaction; and • is permitted to take any actions it is directed to take by the Required Lenders, and any such direction by the Required Lenders will be binding on the other Lenders. <p>Each Lender also confirms that it has not relied on the Agent in making its Loans to the Borrower and has exercised its own independent credit judgment.</p>

Article	Title	Comment
11.6	Default; Event of Default	<p>This provision is similar to Articles 11.3 (<i>Exclusion of Liability</i>) and 11.4 (<i>No Obligations to Monitor</i>) in limiting the Agent's obligations to monitor the Borrower. It is an important additional protection, however, in that the Agent is not deemed to know of an Event of Default unless it has been specifically notified of that fact. This helps to protect the Agent from a later claim by a Lender that the Agent should have known of an Event of Default (and notified the Lenders of that fact) before the Agent actually received notice.</p> <p>This is relevant because conduct by the Agent that may be acceptable under ordinary circumstances may not be acceptable (in other words, such conduct may constitute "gross negligence") if the Agent actually knows that the Borrower is in some financial difficulty. If any Lender suffers loss as a result of such "gross negligent" conduct, the Agent could be liable for that loss.</p>
11.7	Agent in its Individual Capacity	<p>This article contains an authorization for the Agent to deal with the Borrower as if it were not the Agent under the Financing Agreements. An agent owes a duty of loyalty to the Persons it represents, in this case, the other Lenders. Without the protection of this article, the duty of loyalty could require the Agent to limit significantly any other services it may wish to provide to the Borrower in order to avoid situations that might potentially conflict with its role as Agent.</p>
ARTICLE 12	MISCELLANEOUS	
12.2	Amendments or Waivers	<p>The Form Loan Agreement may be amended or provisions waived by the Required Lenders, subject to limited exceptions for fundamental issues in which</p>

Article	Title	Comment
		the consent of all Lenders is required.
12.3	Indulgence Not a Waiver; Remedies Cumulative	The first sentence makes clear that neither any Lender nor the Agent will lose a right or remedy just because it may delay or fail to exercise that right or remedy at some time it may otherwise have the right to do so. This gives all parties the opportunity to work out difficulties without the pressure of possibly waiving rights.
12.4	Survival of Representations and Warranties	<p>There is a legal presumption in some jurisdictions that, absent any agreement of the contracting parties to the contrary, representations and warranties made at signing of an agreement do not “survive the closing”. In the case of the Form Loan Agreement, this presumption might prevent a Lender from holding the Borrower liable after the closing date for any breach of a representation and warranty.</p> <p>This article is intended to override any such presumption that may apply and ensure that the Lenders would have a remedy for breach of a representation and warranty in the Form Loan Agreement even after the Form Loan Agreement has been executed and delivered or the closing has occurred.</p>
12.7	Right of Setoff	This article gives the Lenders a contractual right of setoff that is broader than what may be available under applicable law and avoids some of the formalities associated with the legal remedy.
12.9	Governing Law; Jurisdiction	The governing law of the Form Loan Agreement is stated to be the law of Japan, even if some Borrowers may not be located in Japan. This choice of law promotes certainty in the interpretation and administration of the Form Loan

Article	Title	Comment
		Agreement, as well as being familiar to Japanese Lenders and Borrowers.
12.10	Obligations to Make Payments in Yen	If the Form Loan Agreement is enforced in a jurisdiction outside of Japan, a local court may require the judgment to be stated in the domestic currency and not in yen. When that occurs, there is a chance that the Lender may not receive the actual amount of yen owed by the Borrower. This article provides that the Borrower owes its obligations in yen, and if the amount of any local currency judgment does not when converted yield a sufficient amount of yen to pay off the Obligations, the Borrower must make up the balance in yen.
	Signatures	The Persons signing on behalf of the Borrower should be the same persons who are authorized to do in the Officer's Certificate delivered as a closing condition under Article 4.1(d)(ii) (<i>Conditions Precedent to the Initial Drawdown</i>). The Persons signing on behalf of the Agent and the Lenders should be authorized signatories for each such institution.
Schedule I	Lenders' Commitments	The amount of each Lender's Commitment should be listed in this schedule, together with the address of its lending office.
Schedule II-1	Repayment Schedule	This form of Repayment Schedule may be used if repayments are listed in specific yen amounts, together with the Maturity Date of each payment.
Schedule II-2	Repayment Schedule	This form of Repayment Schedule may be used if repayments are indicated as a percentage of the Loans.

Article	Title	Comment
Schedule III	Pricing Grid for Applicable Margin	This schedule provides the mechanics for determining the Applicable Margin if it is based on the credit rating of the Borrower.
Exhibit A	Definitions	This exhibit collects in one place definitions of all of the capitalized defined terms used in the Form Loan Agreement or references to such definitions in the text of the Form Loan Agreement.
Exhibit B	Form of Drawdown Notice	<p>This is the form of the Drawdown Notice, which the Borrower is required to deliver before each Drawdown. It has two primary purposes:</p> <p>(i) to specify the amount of the Proposed Drawdown and other details of the advance; and</p> <p>(ii) for the Borrower to confirm that all of the representations and warranties of the Borrower are correct (subject to any materiality qualifications – see the discussion of this topic in the comments to Article 4.2(b) (<i>Conditions Precedent to Each Drawdown</i>)) and no Default or Event of Default has occurred on the date of the Proposed Drawdown or will occur as a result.</p>
Exhibit C	Form of Opinion of Counsel	It is helpful to a smooth closing if the form of the opinion to be delivered as a condition precedent under Article 4.1(c)(i) (<i>Conditions Precedent to the Initial Drawdown</i>) is negotiated beforehand and attached as an exhibit to the Form Loan Agreement.
Exhibit D	Form of Officer's Certificate	The Officer's Certificate is typically signed by an authorized officer of the Borrower in his or her individual capacity, rather than "for" the Borrower. The distinction is that by signing as an individual, the officer would be personally liable to the Lenders

Article	Title	Comment
		<p>and the Agent for any incorrect statements in the Officer's Certificate, rather than the Borrower being liable as a corporate entity. (Note, though, that the officer would ordinarily be fully indemnified by the Borrower for any such personal liability.)</p>
Exhibit E	Form of Assignment and Acceptance Agreement	<p>The Assignment and Acceptance Agreement is signed by the Assignor and the Assignee when the Assignor sells to the Assignee a portion of the Assignor's interest in its Loans under the Form Loan Agreement.</p> <p>This document effects a direct assignment of the Assignor's interest to the Assignee, and the Assignee becomes an actual party to the Form Loan Agreement as a new Lender.</p> <p>Consent of the Borrower or the Required Lenders (or all Lenders) may also be required in appropriate circumstances.</p>