

08-15-2002



Form PTO-1595
(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings

102190803

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Resubmit

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): 8-13-02
Banc of America Strategic Solutions, LLC

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other

Execution Date: October 23, 2001

2. Name and address of receiving party(ies)

Name: Endeavour, LLC

Internal Address:

Street Address: 225 West Wacker Drive

City: Chicago State: IL Zip: 60606

Additional name(s) & address(es) attached? ☐ Yes ☐ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

B. Patent No.(s) 5,437,604 5,512,032
5,618,257

Additional numbers attached? ☐ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: W. Steven Bryant, Esq.

Internal Address:

Street Address:

Oppenheimer, Blend, Harrison & Tate, Inc.
711 Navarro, Sixth Floor

City: San Antonio State: TX Zip: 78205

6. Total number of applications and patents involved: 3

7. Total fee (37 CFR 3.41).....\$ \$120.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

W. Steven Bryant
Name of Person Signing

W. Steven Bryant
Signature

8/8/02
Date

Total number of pages including cover sheet, attachments, and documents: ☐

Mail documents to be recorded with required cover sheet information to:
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Form PTO-1595

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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102102321

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Banc of America Strategic Solutions, LLC

5.20.02

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:



Assignment



Merger



Security Agreement



Change of Name



Other

Execution Date:

October 23, 2001

2. Name and address of receiving party(ies)

Name: Endeavour, LLC

Internal Address:

Street Address: 225 West Wacker Drive

City: Chicago State: IL Zip: 60606

Additional name(s) & address(es) attached? ☐ Yes ☐ No

4. Application number(s) or patent number(s):

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Oppenheimer, Blend, Harrison & Tate, Inc.
711 Navarro, Sixth Floor

City: San Antonio State: TX Zip: 78205

6. Total number of applications and patents involved: 3

7. Total fee (37 CFR 3.41).....\$ 120.00



Enclosed



Authorized to be charged to deposit account

8. Deposit account number:

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

W. Steven Bryant

Name of Person Signing

W. Steven Bryant

Signature

05/13/2002

Date

Total number of pages including cover sheet, attachments, and documents: 10

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**CONTRIBUTION AGREEMENT
(SS LLC TO ENDEAVOUR)**

THIS CONTRIBUTION AGREEMENT (this "Agreement") is made as of October 23, 2001 (the "Agreement Date") by and between BANC OF AMERICA STRATEGIC SOLUTIONS, LLC, a Delaware limited liability company (the "Contributor"), and ENDEAVOUR, LLC, a Delaware limited liability company (the "Issuer"). The Issuer and the Contributor are sometimes referred to herein individually as a "Party" and collectively as "Parties."

W I T N E S S E T H

WHEREAS, the Contributor desires to make a capital contribution to the Issuer in the form of a transfer, assignment and contribution of the Loans and Equity Interests identified on Annex A in the respective amounts described thereon; and

WHEREAS, the Issuer desires to accept from the Contributor such transfer, assignment and contribution of the Contributed Assets and the Participations and to accept certain responsibilities and obligations in respect thereof as provided hereunder;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer and Contributor hereby agree as follows:

1. Definitions.

1.1 In this Agreement and its Annexes, the following terms shall have the following meanings:

"Adjusted Capital Contribution" is defined in Section 2.4.

"Affiliate" means "affiliate" as defined in either (a) Bankruptcy Code § 101(2) or (b) Rule 144 of the Securities Act, as the context requires.

"Agent", with respect to each Loan that is not a Bilateral Loan, has the meaning given it on Annex A.

"Agent Expenses" means any costs, liabilities, losses, claims, damages, and expenses incurred by, and any indemnification claims of, any Agent, for which such Agent has recourse under the Credit Documents to the Contributor, but only to the extent attributable or allocable to the Contributed Assets.

"Agreement" is defined in the preamble.

"Agreement Date" is defined in the preamble.

"Assignment", with respect to each Credit Agreement, means the document (if any) in the form specified under such Credit Agreement for an assignment of the applicable Loans and any other document used to re-title any of the Loans.

"Assumed Obligations" means the Issuer's obligations and liabilities with respect to, or in connection with, the Contributed Assets resulting from facts, events, or circumstances arising or occurring on and after the Agreement Date; excluding, however, the Retained Obligations. For clarity's sake, "Assumed Obligations" includes all such obligations of BANA as the issuer of Letters of Credit other than BANA's agreements and undertakings under the Fronting Agreement.

"BANA" is defined in Section 3.1.

"BANA Contribution Agreement" is defined in Section 3.1.

"Bankrupt Borrower" means a Borrower with respect to which a Bankruptcy Case has been filed.

"Bankrupt Loans" means Loans with respect to which the applicable Borrower is a Bankrupt Borrower.

"Bankruptcy Case", with respect to each Bankrupt Borrower, has the meaning given it in Annex A.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, 11 U.S.C §§ 101 et seq., as amended.

"Bankruptcy Court", with respect to each Bankruptcy Case, has the meaning given to it in Annex A.

"Bankruptcy Orders", with respect to each Bankrupt Borrower, is defined in Annex A.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and any corresponding or other local rules of the Bankruptcy Court.

"Bar Date", with respect to each Bankruptcy Case, means the last date fixed by the applicable Bankruptcy Court pursuant to the Bankruptcy Code or the Bankruptcy Rules on which proofs of claim or interest may be filed in the applicable Bankruptcy Case, as set forth on Annex A.

"BAS" means Banc of America Securities LLC.

"Benefit Plan" means an "employee benefit plan" subject to Title I of ERISA, a "plan" subject to Section 4975 of the Code or any Entity whose assets include the assets of any such employee benefit plan or plan, as the case may be.

"Bilateral ABL" means each Bilateral Loan identified as such on Annex A.

"Bilateral Collateral" means, with respect to each Bilateral Loan, the property, whether real or personal, tangible or intangible, of whatever kind and wherever located, whether now owned or hereafter acquired or created, in or over which such an Encumbrance of the nature referred to in clause (a) of the definition of such item has been, or is purported to have been, granted to or for the benefit of the Lender under the Credit Documents with respect to such Bilateral Loan.

"Bilateral Loan" means each Loan identified as such on Annex A.

"Borrower" means each borrower identified on Annex A.

"Business Day" means any day that is not (i) a Saturday, (ii) a Sunday, or (iii) any other day on which commercial banks are authorized or required by law to be closed in the City of New York; *provided*, that when used with respect to the LIBO Rate, the term "Business Day" shall also mean that such day is a day on which commercial banks are open for international business (including dealings in Dollar deposits) in London.

"Class A Credit Enhancer" means MBIA Insurance Corporation, an insurance company incorporated under the laws of the State of New York.

"Class A Notes" is defined in the Indenture.

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated under it.

"Collateral" means any property, whether real or personal, tangible or intangible, of whatever kind and wherever located, whether now owned or hereafter acquired or created, in or over which an encumbrance of the nature referred to in item (a) of the definition of "Encumbrance" has been, or is purported to have been, granted to or for the benefit of the Lenders under the Credit Documents.

"Collateral Type" means for each Bilateral Loan each "Collateral Type" (x) which is specified in the collateral chart within the PPM Descriptive Report for such Bilateral Loan and, where separately identified, each subtype thereof and (y) as to which Annex A bears a notation that the Issuer has not completed its independent due diligence with respect to the matters in Section 4.1(y).

"Commitments", with respect to each Borrower, means the commitments to make Loans and/or issue letters of credit in the respective principal amounts set forth on Annex A with respect to such Borrower and includes both funded Commitments and Unfunded Commitments.

"Contributed Assets" means any and all of the Contributor's right, title and interest in, to and under, the Loans (including, subject to the proviso contained in Section 2.1, the

Participated Loans), the Commitments and the Equity Interests and, to the extent related thereto, the following (excluding, however, the Retained Interest, if any):

- (i) all other amounts funded by or payable to the Contributor under the applicable Credit Documents, and all obligations owed to the Contributor in connection with the Loans and the Commitments;
- (ii) the Credit Documents;
- (iii) with respect to each Bankrupt Loan, the Proof of Claim, if one has been filed;
- (iv) all claims (including "claims" as defined in Bankruptcy Code § 101(5)), suits, causes of action, and any other right of the Contributor, whether known or unknown, against a Borrower, an Obligor, or any of their respective Affiliates, agents, representatives, contractors, advisors, or any other Entity that in any way is based upon, arises out of or is related to any of the foregoing, including, to the extent permitted to be assigned under applicable law, all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of the Contributor against any attorney, accountant, financial advisor, or other Entity arising under or in connection with the Credit Documents;
- (v) all Guaranties and all Collateral and security of any kind for or in respect of the foregoing;
- (vi) all cash, securities or other property, and all setoffs and recoupments, received, applied or effected by or for the account of the Contributor under the Loans and the Commitments, if any, and other extensions of credit under the Credit Documents (whether for principal, interest, fees, reimbursement obligations, or otherwise) after the Trade Date, including all distributions obtained by or through redemption, consummation of a plan of reorganization, restructuring, liquidation, or otherwise of Borrower, any Obligor or the Credit Documents, and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing;
- (vii) the economic benefit of permanent commitment reductions, permanent repayments of principal and amendment, consent, waiver, and other similar non-ordinary course fees received by the Contributor from and after the Trade Date;
- (viii) all documents executed and delivered by or on behalf of the related predecessors-in-title, if any, in their respective capacity as such, including all of the Contributor's rights under the BANA Contribution Agreement; and
- (ix) all proceeds of the foregoing.

"Contributor" is defined in the preamble.

"Contributor Excluded Information" is defined in Section 4.1(q).

"Contributor Indemnitor" is defined in Section 6.2.

"Controlling Party" is defined in the Indenture.

"Credit Agreement", with respect to each Loan, has the meaning given to it on Annex A.

"Credit Documents", with respect to each Loan, means the applicable Credit Agreement and all guaranties, security agreements, mortgages, deeds of trust, letters of credit, reimbursement agreements, waivers, supplements, forbearances and amendments and all other documents and agreements executed and delivered in connection therewith.

"Deferred Assignment Effective Date" means, with respect to any Participated Loan, the effective date of the assignment of such Participated Loan from the Contributor to the Issuer.

"Distribution" means any payment or distribution of cash (including interest), notes, securities or other property (including Collateral) or proceeds under or in respect of the Contributed Assets.

"Dollar" and the sign "\$" means the lawful money of the United States of America.

"Encumbrance" means any (a) mortgage, pledge, lien, security interest, charge, hypothecation, or other encumbrance, security agreement, security arrangement or adverse claim against title of any kind; (b) purchase or option agreement or put arrangement; (c) subordination agreement or arrangement other than as specified in the Credit Documents; or (d) agreement to create or effect any of the foregoing.

"Entity" includes any individual, partnership, corporation, limited liability company, association, estate, trust, business trust, and Governmental Authority.

"Equity Interests" means, with respect to any Loan, those shares of capital stock, if any, of the Borrower or any Obligor thereunder set forth under such caption on Annex A.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated under it.

"Escrowed Credit Documents" means (i) the Credit Documents that on the Agreement Date are held in escrow pending the closing of the transactions contemplated by this Agreement in the offices of Mayer, Brown & Platt, 190 South LaSalle Street, Chicago, Illinois 60603-3441 and (ii) all documents and written information contained in the informational notebooks provided by BANA to PPM with respect to each Loan.

"Filing Date", with respect to each Bankruptcy Case, means the date of the filing of the petition commencing such Bankruptcy Case.

"Fitch" is defined in the Indenture.

"Fronting Agreement" means the agreement, dated the Agreement Date, between BANA and the Issuer in the form of *Exhibit A*.

"Governmental Authority" means any federal, state, or other governmental department, agency, institution, authority, regulatory body, court or tribunal, foreign or domestic, and includes arbitration bodies, whether governmental, private or otherwise.

"Guaranty" means a guaranty of any of a Borrower's obligations under the applicable Credit Documents, including such Borrower's obligations in connection with the applicable Loan(s).

"Impairment" means any claim, counterclaim, setoff, defense, action, demand, litigation (including administrative proceedings or derivative actions), Encumbrance, right (including expungement, avoidance, reduction, contractual or equitable subordination, or otherwise) or defect, other than those created pursuant to the Credit Documents, the effect of which is, or could reasonably be expected to be, materially adverse to the Contributed Assets, in whole or in part.

"Indemnified Party" is defined in Section 6.3.

"Indemnifying Party" is defined in Section 6.3.

"Indenture" means the Indenture, dated as of October 23, 2001, among the Issuer, the Trustee and the Class A Credit Enhancer, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Issuer" is defined in the preamble.

"Issuer Excluded Information" is defined in Section 5.1(g).

"Issuer Indemnitee" is defined in the Section 6.1.

"Knowledge" means the actual knowledge of any director, officer, vice president or any other employee of BANA or its Affiliates who currently has responsibility for managing the ongoing lending relationship with a Borrower.

"Lender", with respect to any Borrower, means a lender under the applicable Credit Agreement and its successors, transferees, and assigns.

"Letter of Credit" means each letter of credit issued upon the application of any Obligor in respect of any Bilateral Loan which is outstanding on or after the Agreement Date, whether issued prior to, on or after the Agreement Date.

"LIBO Rate" means, for any date, the rate appearing on Page 3750 of the Dow Jones Market Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as mutually agreed to by the Contributor and the Issuer from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to any such date, as the rate for Dollar deposits with a maturity of thirty days. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" shall be the rate at which Dollar deposits of \$5,000,000 and for a thirty day period are offered by the principal London office of BANA in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to any such date.

"Loans", with respect to any Borrower, means the loans and Letters of Credit identified on Annex A in the respective amounts specified thereon, and includes the note(s) (if any) evidencing such Loans issued under the applicable Credit Agreement.

"Majority" is defined in the Indenture.

"Membership Interest" is defined in Section 2.5.

"Moody's" is defined in the Indenture.

"Non-Permitted Encumbrances" is defined in Section 4.1(v).

"Notes" means the Class B Notes of the Issuer.

"Obligor" means any Entity other than a Borrower and the applicable Lenders that is obligated under the applicable Credit Documents.

"Operative Documents" means (a) this Agreement, (b) the applicable Assignments and (c) the Transfer Notice, if any.

"Participated Loan Advance" is defined in Section 2.2(b).

"Participated Loans" means the two Bilateral Loans identified as such on Annex A.

"Participation" is defined in Section 2.2(a).

"Party" is defined in the preamble.

"Permitted Encumbrances" is defined in Section 4.1(y).

"PPM" means PPM America, Inc., a Delaware corporation.

"PPM Descriptive Report" means the report and the liquidation analysis with respect to each Bilateral Loan included as supporting documentation in the binder containing the Final Pricing Assumptions List, dated October 5, 2001, provided to BANA by PPM.

"Portfolio Information" is defined in Section 4.1(t) hereof.

"Portfolio Manager" is defined in the Indenture.

"Pre-Agreement Date Accruals" means all interest and commitment, facility, letter of credit and other similar ordinary course fees (other than amendment, consent, waiver and other similar non-ordinary course fees) payable under the Credit Documents in respect of the Loans and the Commitments, if any, that accrue during the period before (but excluding) the Agreement Date.

"Proof of Claim", with respect to each Bankruptcy Case, has the meaning given it in Annex A.

"Rating Agencies" is defined in the Indenture.

"Required Consents" means the consents required pursuant to the Transaction Documents to transfer the Contributed Assets from the Contributor to the Issuer or to effect the Participation, which Required Consents are specified in Annex A.

"Requirements of Law" for any Entity shall mean the certificate of incorporation and by-laws or other organizational or governing documents of such Entity, and any requirement of any law, rule or regulation or Governmental Authority, in each case applicable to or binding upon such Entity or to which such Entity is subject, whether federal, state or local (including usury laws, the Federal Truth in Lending Act and Regulation Z and Regulation B of the Board of Governors of the Federal Reserve System).

"Retained Interest", with respect to those Loans indicated on Annex A as "Settled Without Accrued Interest", means the right (if any) retained by the Contributor to receive, in accordance with Section 8.2, payments or other property (including Collateral) paid or delivered in respect of the Pre-Agreement Date Accruals, provided that such payments or distributions by Borrower are made (A) on or before the due date thereof or the expiration of any applicable grace period, each as specified in the Credit Documents as in effect on the Trade Date (or, if no such grace period exists, the expiration of (x) 45 days from such due date if such due date was prior to the Trade Date or (y) 30 days from such due date if such due date was on or after the Trade Date, as the case may be), and (B) before a default by Borrower or any Obligor in connection with other payment obligations of Borrower or such Obligor under the Credit Documents; otherwise such accrued amounts (if and when paid by Borrower or such Obligor) and any other accrued amounts due thereafter shall be for the account of the Issuer, and the Contributor shall not be entitled to any part thereof.

"Retained Interest Distribution" means a payment or other distribution of property payable or deliverable to the Contributor in respect of a Retained Interest.

"Retained Obligations" means all obligations and liabilities of the Contributor or any of its Affiliates, including BANA, relating to the Contributed Assets that (a) result from facts, events or circumstances arising or occurring prior to the Agreement Date, other than the acts and omissions of BANA or any of its Affiliates taken or failed to have been taken, as the case may be, at the direction of PPM, its Affiliates or their respective agents from and after the Trade Date, (b) result from the Contributor's breach of its representations, warranties, covenants, or agreements under this Agreement or the Credit Documents, (c) result from the Contributor's bad faith, gross negligence, or willful misconduct, (d) are attributable to the Contributor's actions or obligations in any capacity other than as a Lender under the Credit Documents or (e) are attributable to any interest rate swap, collar, cap or other arrangement requiring payments contingent upon interest rates entered into between BANA or any of its Affiliates and any Borrower referencing any Credit Document, which such arrangements shall not be secured by any Collateral. For clarity's sake, "Retained Obligations" shall not include any obligations of BANA which shall continue or be undertaken after the Agreement Date pursuant to the Fronting Agreement in respect of any Letter of Credit.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated under it.

"Stipulated Value" means, for each Collateral Type (including subtype, if any) relating to a Bilateral Loan, PPM's mid-point liquidation value (or, if no mid-point liquidation value is provided, the average of the low and high liquidation values) specified for such Collateral Type (or subtype, if any) in the liquidation analysis contained in the PPM Descriptive Report.

"Trade Confirmation" means the trade confirmation by and between the Contributor and the Issuer dated as of the Trade Date.

"Trade Date" means October 5, 2001.

"Transaction Documents" means the Credit Documents and the Operative Documents.

"Transfer Fee", with respect to each Loan, means the transfer fee payable to the applicable Agent in connection with the transfer by the Contributor to the Issuer of the applicable Loan. All Transfer Fees are set forth on Annex A.

"Transfer Notice", with respect to each Bankrupt Loan, means the notice and evidence of transfer (if any) under Bankruptcy Rule 3001(c).

"Transferred Portion" is defined in Section 10.1.

"Trustee" means The Chase Manhattan Bank, a New York banking corporation, as trustee under the Indenture.

"Unfunded Commitments", with respect to each Borrower, means unfunded Commitments in the respective principal amounts set forth on Annex A with respect to such Borrower.

2. Contribution of the Contributed Assets and the Participations.

2.1 In consideration of the mutual covenants and agreements in, and subject to the terms and conditions of this Agreement:

(a) the Contributor hereby irrevocably transfers, assigns, grants, conveys and contributes the Contributed Assets to the Issuer with effect on and after the Agreement Date;

(b) the Issuer hereby acquires the Contributed Assets, and hereby assumes and agrees to perform and comply with all Assumed Obligations, with effect on and after the Agreement Date; and

(c) notwithstanding the foregoing, (i) the Contributor agrees to remain responsible for, and assumes and agrees to perform and comply with the Retained Obligations, and (ii) the Issuer assumes no obligations other than the Assumed Obligations;

provided, however, that clauses (a) and (b) of this Section 2.1 shall not be effective as to any Participated Loan or the related Contributed Assets until the Deferred Assignment Effective Date with respect to such Participated Loan.

2.2 (a) With respect to each Participated Loan, from and after the Agreement Date through the Deferred Assignment Effective Date for such Participated Loan, the Contributor hereby grants and contributes to the Issuer, and the Issuer hereby accepts and assumes all of the economic benefit and risk of loss from the Contributor of, an undivided 100% participation interest (the "Participation") in and to such Participated Loan and all claims, rights, Guaranties, Collateral and security therefor which would constitute related Contributed Assets if such Participated Loans were not excluded from Section 2.1(a), but otherwise on the same terms and conditions set forth in this Agreement, and the terms of this Agreement shall be construed accordingly. The Contributor agrees that it (i) shall not take any action with respect to the Participations other than in accordance with the prior written instructions of the Issuer, and (ii) shall take (or refrain from taking) any action with respect to the Participations in accordance with the prior written instructions of the Issuer except, in each case, (A) as prohibited under applicable law, rule, order, contract or the Participated Loans and the Credit Documents related thereto, or (B) if following such instructions might (in the Contributor's reasonable determination) expose the Contributor or its Affiliates to any obligation, liability or expense that in the Contributor's reasonable judgment is material and for which the Contributor has not been provided adequate indemnity.

(b) Unfunded Commitments under Participated Loans.

(i) The Contributor shall promptly (and, to the extent practicable, not later than 12:00 Noon, New York City Time, on the date a Participated Loan Advance is to be made) notify the Issuer in writing of (A) any advance (a "Participated Loan

Advance") required to be made by the Contributor under the Commitment (including advances on Letters of Credit) related to any such Participated Loan, (B) any request for the issuance of Letters of Credit related to any such Participated Loan and (C) the date on which such Participated Loan Advance is to be paid or such issuance is to be made;

(ii) Subject to Section 2.2(a), on or before 3:00 p.m. New York City time on the date on which such Participated Loan Advance is required to be paid by or on behalf of the Contributor, the Issuer shall pay to the Contributor, in immediately available funds, without set-off, counterclaim or deduction of any kind, an amount equal to such Participated Loan Advance;

(iii) Subject to Section 2.2(a), the Contributor shall have the option (but not the obligation) to advance funds on behalf of the Issuer in the event that the Issuer does not participate in a Participated Loan Advance in accordance with subclause (ii) above; *provided*, that the Issuer shall pay to the Contributor interest on the amount of the Participated Loan Advance for the period between the date of the Participated Loan Advance to, but excluding, the date paid by the Issuer, at the LIBO Rate plus 2.00%. Any such Participated Loan Advance may be repaid by set-off against the Issuer's interest in all payments made by or on behalf of the Borrower under the Credit Documents related to such Participated Loan that the Issuer would have otherwise been entitled to receive under this Section 2.2(c); and

(iv) Subject to Section 2.2(a), with respect to the issuance of Letters of Credit under any Participated Loan, the Contributor will, or will arrange on its behalf for, the issuance of Letters of Credit in accordance with the terms of the Credit Documents related to any such Participated Loan, after consultation with the Issuer.

(c) Upon the Contributor's receipt of any Distribution under or in respect of a Participated Loan, the Contributor shall deliver such Distribution to the Issuer in accordance with Section 8.

(d) From and after the Agreement Date, the Contributor and the Issuer shall use all reasonable efforts to cause the Issuer to be licensed within 180 days of the Agreement Date as a commercial finance company authorized to make loans pursuant to the Requirements of Law of the State of California. Promptly after obtaining such license, the Contributor and the Issuer shall effect the full assignment of the Participated Loans to the Issuer pursuant to the terms of the applicable Credit Agreement; *provided*, that notwithstanding anything to the contrary in this Section 2.2(d), in the event that at any time after 180 days from the Agreement Date the long-term unsecured debt rating of BANA is not rated at least "A-3" by Moody's and "A-" by Fitch, the Contributor and the Issuer shall, at the option of the Issuer and with the prior written consent of the Rating Agencies, promptly effect the full assignment of the Participated Loans to the Issuer pursuant to the terms of the applicable Credit Agreement. In the event that such license will not be obtained by the Issuer within 180 days of the Agreement Date, the Issuer will provide each of the Rating Agencies written notice that such license had not been obtained by such date. On the Deferred Assignment Effective Date with respect to any Participated Loan, without any further action by the Contributor, the Issuer or any other Entity, the Participation in

such Participated Loan shall terminate and shall be of no further force and effect (except that each Party shall remain liable to each other for their respective liabilities and obligations under this Section 2.2 which arose prior to the Deferred Assignment Effective Date with respect to such Participated Loan).

2.3 This Agreement is intended to, and, upon execution hereof, shall, be a contribution and absolute assignment having the effect of a true sale of the Contributed Assets and the Participations.

2.4 Subject to adjustment as provided below, the Issuer and the Contributor acknowledge and agree that the aggregate amount of the Contributor's capital contribution pursuant to Section 2.1(a) and Section 2.2(a) is \$177,739,980, which represents the fair market value of the Contributed Assets and the Participations based upon the principal amounts of the Loans outstanding and the Commitments, if any, as of the Trade Date. Subject to adjustment as provided below, with respect to each Loan, the portion of the aggregate capital contribution attributable to such Loan, based upon the principal amounts of the Loans outstanding and the Commitments, if any as of the Trade Date, is set forth on Annex B, together with a calculation thereof. The Issuer and the Contributor acknowledge and agree that the aggregate amount of Contributor's capital contribution shall be adjusted in accordance with this Agreement and the Trade Confirmation based upon (i) the principal amount of the Loans outstanding and the Commitments, if any, as of the Agreement Date as set forth on the supplement to Annex A delivered pursuant to Section 4.1(f) and (ii) permanent reductions, permanent repayments of principal and all amendment, consent, waiver and other similar non-ordinary course fees and all other Distributions (other than Retained Interest Distributions) received by the Contributor in connection with the Contributed Assets and the Participations from and after the Trade Date and as of the Agreement Date as and to the extent set forth on Annex C delivered pursuant to Section 4.1(f). Not later than October 26, 2001, the Contributor shall deliver to the Issuer a supplement to Annex B which will, as of the Agreement Date, set forth the aggregate amount of Contributor's capital contribution as adjusted pursuant to the preceding sentence, together with a calculation thereof, subject to final reconciliation by the Issuer and the Contributor within 10 Business Days thereafter (the "Adjusted Capital Contribution"). Not later than the second Business Day following final reconciliation of the Adjusted Capital Contribution by the Issuer and the Contributor, (a) if the Adjusted Capital Contribution is greater than \$177,739,980, the Issuer shall pay to the Contributor an amount equal to such excess or (b) if the Adjusted Capital Contribution is less than \$177,739,980, then the Contributor shall pay to the Issuer an amount equal to such deficiency. All amounts required to be paid pursuant to this Section 2.4 shall be paid in cash by wire transfer of immediately available funds.

2.5 Simultaneously with the execution and delivery of this Agreement, the Issuer shall (i) issue to the Contributor a membership interest in the Issuer in an amount equal to \$17,150,000, which membership interest shall represent 49% of the issued and outstanding membership interests in the Issuer (the "Membership Interest"); (ii) issue to the Contributor its Notes in an aggregate principal amount equal to \$33,355,000 and (iii) distribute to the Contributor \$127,234,980 in cash.

3. Further Assurances.

3.1 Although the Contributor obtained beneficial ownership of the Contributed Assets effective as of August 23, 2001 pursuant to that certain Amended and Restated Contribution Agreement, dated as of August 23, 2001 (the "BANA Contribution Agreement"), by and between Bank of America, N.A. ("BANA") and the Contributor, the Contributed Assets were not re-registered in the name of the Contributor and currently are registered in the name of BANA. Delivery and transfer of the Contributed Assets shall be effective on the Agreement Date and shall be evidenced conclusively by the execution and delivery of this Agreement and the other documents contemplated hereby. The Issuer hereby instructs the Contributor and BANA to re-register the Contributed Assets in the name of the Issuer.

3.2 Each of the Issuer and the Contributor agrees (i) to execute and deliver, or cause to be executed and delivered, all such instruments and (ii) to take, or cause to be taken, all such actions as the other Party or the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes) may reasonably request to effectuate the intent and purpose, and to carry out the terms, of this Agreement, including the procurement of any third-party consents and amendments to agreements and the filing of continuation statements in all necessary jurisdictions. Without limiting the Contributor's obligations hereunder, at the request of the Issuer or the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes), the Contributor shall, to the extent not completed on or prior to the Agreement Date, execute an individual assignment or endorsement of the Contributed Assets, in form and substance as reasonably requested by the Issuer. From and after the date hereof, in addition to the Parties' rights and obligations under Section 6, the Contributor shall cooperate with each of the Issuer and the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes), and the successors or assigns of the Issuer, in connection with any litigation involving any Contributed Assets, to the extent reasonably requested by the Issuer or the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes), as applicable, and at the sole expense of the Issuer. Without limiting the foregoing, the Contributor hereby agrees (on behalf of itself and BANA) that all Bilateral Collateral in the possession or under the control of the Contributor or BANA on or following the Agreement Date and as identified as such on Annex A or, after the Agreement Date, identified as such in a written notice from the Issuer to the Contributor, shall be maintained on behalf of the Issuer and any permitted assignee of the Issuer and subject to written instructions given by the Issuer or such assignee in accordance with the terms of the applicable Credit Documents.

4. Contributor's Representations and Warranties.

4.1 The Contributor represents, warrants and covenants to the Issuer (as of the Trade Date and as of the Agreement Date, as applicable) that:

(a) The Contributor (i) is duly organized and validly existing under the laws of its jurisdiction of organization or incorporation, (ii) is in good standing under such laws and (iii) has full power and authority to execute, deliver and perform its obligations under the Transaction Documents to which it is or will become a party.

(b) The Contributor's execution, delivery and performance of the Transaction Documents to which it is or will become a party has not resulted and will not result in a breach of any provision of (i) the Contributor's organizational documents, (ii) any statute, law, writ, order, rule or regulation of any Governmental Authority applicable to the Contributor, (iii) any judgment, injunction, decree or determination applicable to the Contributor or (iv) any contract, indenture, mortgage, loan agreement, note, lease or other instrument by which the Contributor may be bound or to which any of the assets of the Contributor are subject.

(c) (i) The Transaction Documents to which the Contributor is a party (A) have been duly and validly authorized, executed and delivered by the Contributor and (B) are the legal, valid and binding obligations of the Contributor, enforceable against the Contributor in accordance with their respective terms, except that enforceability against the Contributor may be limited by bankruptcy, insolvency or similar laws of general applicability affecting the enforcement of creditors' rights generally and by the court's discretion in relation to equitable remedies; and

(ii) No notice to, registration with, consent or approval of, or any other action by, any relevant Governmental Authority or other Entity (other than the Required Consents) is or will be required for the Contributor to execute, deliver and perform its obligations under, the Transaction Documents (other than, in the case of each Bankrupt Loan, the applicable Transfer Notice, if any) to which the Contributor is or will be a party. All Required Consents have been obtained by the Contributor (such that the contribution of the Contributed Assets or the Participations by the Contributor to the Issuer on the Agreement Date or the Deferred Assignment Effective Date, as the case may be, will not conflict with, result in a breach of any terms and provisions of, or constitute a default under, the related Credit Agreement) and all applicable Transfer Notices have been delivered in accordance with the Bankruptcy Code and applicable Bankruptcy Rules.

(d) The Contributor is the sole beneficial owner of the Contributed Assets, free and clear of any Encumbrance, will arrange for the delivery of good title to the Contributed Assets (excluding, however, the Participated Loans, as to which the Contributor will arrange for the delivery of good title on the applicable Deferred Assignment Effective Date) to the Issuer free and clear of any Encumbrances created by the Contributor, and except for the Trade Confirmation, the Contributed Assets are not subject to any prior sale, transfer, assignment or participation by the Contributor or any agreement to assign, convey, transfer or participate, in whole or in part.

(e) No proceedings, injunctions, writs, restraining orders or other orders are (i) pending against the Contributor, except with respect to each Bankrupt Loan, for the applicable Bankruptcy Case and the proceedings thereunder, or (ii) (A) to the best of the Contributor's knowledge, without duty of inquiry of any Governmental Authority, threatened against the Contributor, or (B) to the best of the Contributor's Knowledge, without duty of inquiry, threatened against the Contributed Assets, in each case before any relevant Governmental Authority that, in the aggregate, will materially and adversely affect (1) the Contributed Assets or (2) any action taken or to be taken by the Contributor under this Agreement.

(f) The principal amounts of the Loans outstanding and the Commitments, if any, as of the Trade Date are accurately stated in Annex A. Not later than October 26, 2001, the Contributor shall deliver to the Issuer a supplement to Annex A which will, as of the Agreement Date, accurately set forth the principal amounts of the Loans outstanding and the Commitments, if any, together with a representation and warranty from the Contributor stating that such principal amounts of Loans outstanding and Commitments, if any, are accurate as of the Agreement Date. Not later than October 26, 2001, the Contributor shall deliver to the Issuer Annex C, which shall set forth all permanent reductions, permanent repayments of principal and all amendment, consent, waiver and other similar non-ordinary course fees and all other Distributions (other than Retained Interest Distributions) received by the Contributor in connection with the Contributed Assets from and after the Trade Date and as of the Agreement Date, together with a representation and warranty from the Contributor stating that such amounts are accurate as of the Agreement Date.

(g) Except for the Commitments, if any, there is no funding obligation of any kind (whether fixed, contingent, conditional or otherwise) in respect of the Contributed Assets or the Assumed Obligations (including any obligation to make advances or to purchase participations in letters of credit under any Credit Documents or any obligation relating to any currency or interest rate swap, hedge or similar arrangement) that the Contributor or the Issuer is or will be required to pay or otherwise perform that the Contributor has not paid or otherwise performed in full. Except as set forth on Annex A, since the Trade Date, there have been no increases in the Commitments, if any.

(h) The Contributor has not engaged in any acts or conduct or made any omissions including as a member of any official or unofficial committee relating to any Borrower or Obligor, that will result in the Issuer receiving proportionately less in payments or distributions under, or less favorable treatment (including the timing of payments or distributions) for, the Contributed Assets than is received by other Lenders holding loans or commitments of the same tranche as the Loans and Commitments.

(i) The Contributor has performed, and has complied with, all obligations required to be performed or complied with by it under the Credit Documents and is not in breach of any of the Credit Documents, and, with respect to each of the Bankrupt Loans, has performed and has complied with all obligations to be performed or complied with by it under the Bankruptcy Orders and is not in violation of the Bankruptcy Orders.

(j) No broker, finder or other Entity acting under the Contributor's authority is entitled to any broker's commission or other fee in connection with the transactions contemplated by the Operative Documents for which the Issuer could be responsible.

(k) Other than as set forth in Annex A, the Contributor or an Affiliate thereof (i) is an original Lender under each Credit Agreement and (ii) originally made its related Loans.

(l) Except as set forth on Annex A, the Contributor is not and has never been (i) an "insider" of any Borrower or Obligor (as "insider" is defined in Bankruptcy Code Section 101(31)) or (ii) an Affiliate of any Borrower or Obligor.

(m) The Contributor has not effected or received the benefit of any setoff against any Borrower or Obligor on account of the Contributed Assets which would result in an Impairment or reduction of the Contributed Assets.

(n) Except as set forth on Annex A, the Contributor has not received any written notice other than those publicly available in the relevant Bankruptcy Case or otherwise that (i) any payment or other transfer made to or for the account of the Contributor from or on account of any Borrower or Obligor under the Contributed Assets is or may be void or voidable as an actual or constructive fraudulent transfer or as a preferential transfer or (ii) the Contributed Assets, or any portion thereof, are void, voidable, unenforceable or subject to any Impairment.

(o) The Contributor acknowledges that the consideration exchanged under this Agreement for the contribution of the Contributed Assets and the Participations, and the assumption of the Assumed Obligations and the Participations, may differ both in kind and amount from any Distribution.

(p) The Contributor (i) is a sophisticated investor with respect to the contribution of the Contributed Assets and the Participations and the retention of the Retained Obligations, (ii) has adequate information concerning the business and financial condition of the Borrowers or any Obligors (and, with respect to each Bankrupt Loan, the status of the applicable Bankruptcy Case) to make an informed decision regarding the contribution of the Contributed Assets and the Participations, and the retention of the Retained Obligations and (iii) has independently and without reliance on the Issuer, and based upon such information as the Contributor has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that the Contributor has relied upon the Issuer's express representations, warranties, covenants and indemnities in this Agreement. The Contributor acknowledges that the Issuer has not given the Contributor any investment advice, credit information or opinion on whether the contribution of the Contributed Assets, the Participations or the retention of the Retained Obligations is prudent.

(q) The Contributor acknowledges that (i) the Issuer currently may have, and later may come into possession of, information with respect to the Contributed Assets, the Participated Loans, the Borrowers, any Obligors or any of their respective Affiliates that is not known to the Contributor and that may be material to a decision to contribute the Contributed Assets and the Participations, and to retain the Retained Obligations ("Contributor Excluded Information"), (ii) the Contributor has determined to contribute the Contributed Assets and the Participations, and to retain the Retained Obligations notwithstanding its lack of knowledge of the Contributor Excluded Information and (iii) the Issuer shall have no liability to the Contributor, and the Contributor hereby releases and waives any claims it might have against the Issuer or any Issuer Indemnitee whether under applicable securities laws or otherwise, with respect to the Contributor Excluded Information in connection with the transactions contemplated hereby; *provided, however*, that the Contributor Excluded Information shall not, and does not, affect the truth or accuracy of the Issuer's representations and warranties contained in this Agreement.

(r) The Contributor is an "accredited investor" as defined in Rule 501 under the Securities Act. Without characterizing the Contributed Assets or the Participations as a "security" within the meaning of applicable securities laws, the Contributor has not made any offers to sell, or solicited offers to buy, any portion of the Contributed Assets or the Participations in violation of any applicable securities laws. The Contributor hereby acknowledges that the issuance of the Membership Interest and the Notes to be delivered to the Contributor pursuant to this Agreement have not been registered under the Securities Act or registered or qualified for sale under the securities laws of any other jurisdiction and cannot be resold without registration thereunder or exemption therefrom. The Contributor is acquiring such Membership Interest and Notes for its own account for investment and not with a view toward the sale or distribution thereof. The Contributor has sufficient knowledge and experience in financial and business matters to enable the Contributor to evaluate the risks of investment in such Membership Interest and the Notes and has the ability to bear the economic risks of such investment. The Contributor acknowledges that each certificate representing any or all of the Membership Interest and the Notes to be issued to the Contributor hereunder will bear the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY FOREIGN JURISDICTION, AND MAY NOT BE SOLD OR TRANSFERRED UNLESS SUCH RESTRICTIONS ARE COMPLIED WITH AND SUCH SECURITIES ARE REGISTERED PURSUANT TO THE PROVISIONS OF THE ACT AND APPLICABLE UNITED STATES STATE OR FOREIGN SECURITIES LAWS OR THE HOLDER HEREOF HAS DELIVERED TO THE ISSUER AN OPINION OF COUNSEL STATING THAT AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

(s) No interest in the Contributed Assets or the Participations is being sold by or on behalf of one or more Benefit Plans.

(t) With respect to all of the Loans, the Contributor has provided to the Issuer true, correct and complete copies of (i) the applicable Escrowed Credit Documents relating thereto and (ii) with respect to each Bankrupt Loan, the applicable Proof of Claim, if one has been filed (collectively, the "Portfolio Information").

(u) The Contributor has not received (by set-off or otherwise) or directed to others any payments or other transfers from or on account of any Borrower or any Obligor in respect of the Contributed Assets other than those reflected on the historical payment computer files previously provided by the Contributor or its Affiliates to PPM.

(v) Except for consents and waivers (i) given by Lenders generally pursuant to and in accordance with the Credit Agreements or (ii) included in the Escrowed Credit Documents, the Contributor has not given its consent to change, nor has it waived, any term or provision of any Credit Document which alters the amount or time of any payment of principal

or the rate or time of any payment of interest or which materially and adversely affects the rights of the Lenders with respect to any of the Contributed Assets.

(w) The Contributor is not a party to or bound by, and has no Knowledge of, any document, instrument or agreement (other than the Credit Documents and, with respect to each Bankrupt Loan, the applicable Bankruptcy Order) that could materially and adversely affect the Contributed Assets or the Issuer's rights and remedies under this Agreement.

(x) With respect to each Bilateral Loan, the Contributor and its Affiliates, including BANA, have complied, in all material respects, with all Requirements of Law applicable to the Contributor or such Affiliate with respect to the making and servicing of such Bilateral Loan, and each Bilateral Loan was created pursuant to a Credit Agreement that complies, in all material respects, with all Requirements of Law applicable to the Contributor or such Affiliate.

(y) The Credit Documents with respect to each Bilateral Loan create, as security for the obligations purported to be secured thereby, a valid, enforceable and perfected Encumbrance of the nature referred to in clause (a) of the definition of such item on all of the Bilateral Collateral, free and clear of all Encumbrances of the nature referred to in clause (a) of the definition of such item other than (i) Encumbrances permitted under the Credit Documents, (ii) Encumbrances disclosed in the Escrowed Credit Documents and (iii) Encumbrances incurred or arising in the ordinary course of the business of the Borrowers and their Affiliates and not materially affecting the Stipulated Value of such Bilateral Collateral or interfering in any material respect with the use of the property to which any such encumbrance is attached (collectively, the "Permitted Encumbrances"). Notwithstanding the foregoing, (1) the representation and warranty contained in this clause (y) shall not apply to any Bilateral Collateral as to which the representation and warranty is untrue due to either (A) the fraud of the applicable Borrower or any of its Affiliates (unless such fraud is actually known, or should have been known if lien searches had been conducted, to the Contributor on the Agreement Date) in respect of such Bilateral Loan, whether or not known by the Issuer and/or its agents prior to or discovered after the date of the Agreement Date, or (B) the acts or omissions of the Issuer, the Portfolio Manager for the Issuer or any of their respective Affiliates (other than BANA or the Contributor) occurring after the Agreement Date; (2) the representation and warranty contained in this clause (y) shall, as to each Collateral Type for each Bilateral Loan, expire on the 45th day after the Agreement Date, unless, on or prior to such date, the Issuer shall have delivered to the Contributor (A) a written memorandum of a nationally recognized counsel to the effect that (i) the security arrangements for any portion of such Collateral Type for any Bilateral Loan have not been properly perfected or recorded or is subject to one or more Encumbrances other than Permitted Encumbrances (collectively, "Non-Permitted Encumbrances") and (ii) either (x) filings or recordings have been initiated to complete such perfection or recordation or (y) the existence of Non-Permitted Encumbrances (or the commencement of any bankruptcy proceedings) preclude the Issuer from achieving a security interest in such Collateral Type that conforms with the representations and warranties made by Contributor in this clause (y) with respect to such Collateral Type by making such filings or recordings or (z) the actions or inactions of any Borrower, Obligor or other Person preclude the Issuer from making such filings or recordings or from achieving a security interest in such Collateral Type that conforms with the representations

and warranties made by the Contributor in this clause (y) and (B) a certificate of an officer of the Portfolio Manager for the Issuer calculating the effect of such failure of perfection or recordation (or of the existence of Non-Permitted Encumbrances) on the Stipulated Value for such Collateral Type, including as such effect may be mitigated by the effectiveness of such filings or recordings then having been recorded; (3) damages for breach of the representation and warranty contained in this clause (y) shall (A) as to each Collateral Type (including subtype, if any) for any Bilateral Loan, be limited to the lesser of (i) the amount specified in the certificate referred to in clause (ii)(B) of this sentence (as such amount may be mitigated as aforesaid) and (ii) the Stipulated Value of such Collateral Type (including subtype, if any), (B) for all Collateral Types for any Bilateral Loan, not to exceed 100% of the cash purchase price set forth in Annex A with respect to such Bilateral Loan and (C) for all Collateral Types for all Bilateral Loans, not exceed \$43,402,697; and (4) the remedies available to the Issuer with respect to a breach of the representation contained in this clause (y) as to any Bilateral Loans with respect to which a memorandum and certificate shall have been delivered pursuant to clauses (2)(A) and 2(B) of this sentence shall be limited exclusively to the Contributor being obligated, within 90 days of the Agreement Date, having, to the extent feasible, in the sequence of the options set forth in clauses (a) through (e) below, to complete in a manner reasonably satisfactory to the Issuer and the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes), one or more of the following remedial actions: (a) the Contributor may complete the proper perfection or recordation of the security arrangements for each Collateral Type specified in such certificate so long as, after giving effect thereto, the resultant security interest conforms to the requirements of the Credit Documents applicable to any such Collateral Type; (b) the Contributor and the Issuer may agree to adjust the price (based on the recommendation of a mutually acceptable third party accountant) with respect to such Bilateral Loan (or Participation therein) and settle on such adjustment; (c) the Contributor may acquire such Bilateral Loan (or Participation therein) at the price specified in the Trade Confirmation (adjusted appropriately for collections received and applied against principal and/or recoveries made and retained by the Issuer and applied against principal); (d) the Contributor may transfer to the Issuer in substitution for such Bilateral Loan (or Participation therein), a new senior secured commercial loan mutually acceptable to each of the Contributor, the Issuer and the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes); or (e) the Contributor shall indemnify the Issuer (as limited pursuant to clause (3) of this sentence) for damages suffered by the Issuer in accordance with Section 6.1. For purposes of (x) item 3(A) of this Section 4.1(y), damages in respect of any Collateral Type shall be reduced by all collections and recoveries received, applied and retained by (or for the account of) the Issuer on or after the Trade Date in respect of the principal balance of the applicable Bilateral Loan as proceeds of such Collateral Type, (y) items 3(B) and 3(C) of this Section 4.1(y), damages in respect of any Bilateral Loan or all Bilateral Loans shall be reduced by all collections and recoveries received, applied and retained by (or for the account of) the Issuer on or after the Trade Date in respect of the principal balance of the such Bilateral Loan or all Bilateral Loans, as the case may be, and (z) items 4(b), 4(c) and 4(d) of this Section 4.1(y), prices shall be adjusted in the case of Bilateral Loans as to which payments of interest are not paid when due to reflect the time value of money at the LIBO Rate. In the event any liens on any Collateral Type (or portion thereof) which are perfected by any filings or recordings made by any Party hereto are subsequently avoided or disallowed as

preferential transfers, the Issuer's damages hereunder shall not be deemed to have been mitigated or remedied by any such filings or recordings.

(z) With respect to each Loan, the Portfolio Information, the Escrowed Credit Documents and all other written disclosure materials provided to the Issuer by the Contributor and its Affiliates constitute all material written information regarding such Loan (i) which has been furnished pursuant to the Credit Documents therefor and (ii) (A) which is in the possession of the Contributor and its Affiliates or (B) of which the Contributor has Knowledge.

(aa) With respect to each Bankrupt Loan, one of the following applies: (i) if a Proof of Claim has been filed, the applicable Proof of Claim was duly and timely filed on or prior to the Bar Date, (ii) no Bar Date has been set and no Proof of Claim has been filed, or (iii) the Bar Date with respect to such Bankrupt Loan has been set in the applicable Bankruptcy Case and no Proof of Claim has been filed.

(bb) The Contributor is solvent and will not become insolvent after giving effect to the transactions contemplated by this Agreement; the Contributor is currently repaying all of its indebtedness as such indebtedness becomes due; and, after giving effect to the transactions contemplated by this Agreement, the Contributor will have adequate capital to conduct its business as presently conducted and as contemplated by this Agreement.

(cc) The Contributor is not entering into the transactions contemplated hereby with any intent of hindering, delaying or defrauding creditors.

(dd) The legal name of the Contributor is as set forth on the signature page of this Agreement.

(ee) . With respect to each Bilateral ABL identified on Annex A as not having a field audit with respect to the applicable Bilateral Collateral satisfactory to the Issuer completed after the delivery of the most recent borrowing base certificate with respect to such Bilateral ABL, (i) the Contributor or an Affiliate has provided to the Issuer a true and correct copy of the most recent borrowing base certificate which was provided by the applicable Borrower to the Contributor under the applicable Credit Agreement which was in the possession of the Contributor, and, to the Knowledge of the Contributor, the information set forth in such borrowing base certificate was true, correct and complete in all material respects as of the date of such borrowing base certificate, (ii) to the Knowledge of the Contributor, the outstanding principal balance of such Bilateral ABL as of the Agreement Date does not exceed the amount of the borrowing base as specified in such certificate except for (and limited to the amount of) any overadvance reflected on such borrowing base certificate as of the date thereof and (iii) the applicable Lender has monitored such borrowing base certificates in a manner reasonably consistent with prudent commercial banking practices. The representation and warranty contained in this clause (ee) shall expire on the earlier of (1) completion by the Issuer of a field audit of such Bilateral ABL or (2) 120 days following the Agreement Date, unless in either case the Issuer has provided the Contributor written notice of a purported breach of the representation and warranty contained in this clause (ee) prior to such expiration. The Contributor shall indemnify the Issuer for damages suffered by the Issuer as a result of a breach of the

representation and warranty contained in this clause 4.1(ee) in accordance with Section 6.1 except to the extent the Issuer has been indemnified or has a claim pursuant to Section 4.1(y) with respect to any Bilateral Collateral comprising the assets which are the subject of any such borrowing base.

(ff) The state of formation of the Contributor is the State of Delaware, the principal place of business and chief executive office of the Contributor are located in Charlotte, North Carolina, and the offices where the Contributor keeps the originals of its books, records and documents regarding the Contributed Assets are located at the following address: c/o Mayer, Brown & Platt, 190 South LaSalle Street, Chicago, Illinois 60603-3441.

(gg) No Plan (as defined in Section 3(3) of ERISA) maintained by the Contributor or any of its ERISA Affiliates (as defined in Section 414(b), (c), (m) or (o) of the Code) has any accumulated funding deficiency (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived. The Contributor and each ERISA Affiliate of the Contributor have, in a timely manner, made all contributions required to be made by it to any Plan and Multiemployer Plan (as defined in Section 4001(a)(3) of ERISA) to which contributions are or have been required to be made by the Contributor or such ERISA Affiliate, and no event requiring notice to the Pension Benefit Guaranty Corporation under Section 302(f) of ERISA has occurred and is continuing or could reasonably be expected to occur with respect to any such Plan, in any case, that could reasonably be expected to result, directly or indirectly, in any Encumbrance being imposed on the property of the Contributor or the payment of any material amount to avoid such Encumbrance. No Reportable Event (as defined in Section 4043 of ERISA) with respect to the Contributor or any of its ERISA Affiliates has occurred or could reasonably be expected to occur that could reasonably be expected to result, directly or indirectly, in any Encumbrance being imposed on the property of the Contributor or the payment of any material amount to avoid such Encumbrance.

4.2 Except as expressly stated in this Agreement and the Assignments, the Contributor and its Affiliates make no representations or warranties, express or implied, with respect to the transactions contemplated herein and therein.

4.3 The Contributor acknowledges that (a) its contribution of the Contributed Assets and the Participations to the Issuer is absolute and irrevocable; (b) the Contributor shall have no recourse to the Contributed Assets or the Participations, except (i) as set forth in Section 4.1(y) and (ii) with respect to the Contributor's interest in the Notes and Membership Interest; and (c) the Contributor shall have no recourse to the Issuer or PPM, except, in the case of the Issuer, for (i) the Issuer's breaches of its representations, warranties or covenants, and (ii) the Issuer's indemnities, in each case as expressly stated in this Agreement.

5. Issuer's Representations and Warranties.

5.1 The Issuer represents and warrants to the Contributor (as of the Trade Date and as of the Agreement Date) that:

(a) The Issuer (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) is in good standing under such laws, and (iii) has full power and authority to execute, deliver and perform its obligations under, the Transaction Documents to which it is or will become a party.

(b) The Issuer's execution, delivery, and performance of the Transaction Documents to which it is or will become a party has not resulted, and will not result, in a breach of any provision of (i) the Issuer's organizational documents, (ii) any statute, law, writ, order, rule, or regulation of any Governmental Authority applicable to the Issuer, (iii) any judgment, injunction, decree or determination applicable to the Issuer, or (iv) any contract, indenture, mortgage, loan agreement, note, lease, or other instrument by which the Issuer may be bound or to which any of the assets of the Issuer are subject.

(c) (i) The Transaction Documents to which the Issuer is a party (A) have been duly and validly authorized, executed, and delivered by the Issuer, and (B) are the legal, valid, and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except that such enforceability may be limited by bankruptcy, insolvency, or other similar laws of general applicability affecting the enforcement of creditors' rights generally and by the court's discretion in relation to equitable remedies; and

(ii) except as provided in the Credit Documents, no notice to, registration with, consent or approval of, or any other action by, any relevant Governmental Authority or other Entity is or will be required for the Issuer to execute, deliver and perform its obligations under the Transaction Documents (other than the applicable Transfer Notice, if any) to which the Issuer is or will become a party.

(d) Without characterizing the Contributed Assets or the Participations as a "security" within the meaning of applicable securities laws, the Issuer is not acquiring the Contributed Assets or the Participations with a view towards the sale or distribution thereof in violation of the Securities Act; *provided, however*, that the Issuer may resell the Contributed Assets if such resale is in accordance with the Securities Act and in compliance with Section 10.

(e) The Issuer acknowledges that the consideration exchanged under this Agreement for the acquisition of the Contributed Assets and the Participations, and the assumption of the Assumed Obligations and the Participations, may differ both in kind and amount from any Distribution.

(f) Each of the Issuer and its agents (other than BAS) (i) is a sophisticated Entity with respect to the acquisition of the Contributed Assets and the Participations and the assumption of the Assumed Obligations, (ii) is able to bear the economic risk associated with the acquisition of the Contributed Assets and the Participations and the assumption of the Assumed Obligations, (iii) has adequate information concerning the business and financial condition of the Borrowers or any Obligors to make an informed decision regarding the acquisition of the Contributed Assets, the Participations and the assumption of the Assumed Obligations, (iv) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the acquisition of rights and assumption of liabilities of

the type contemplated in this Agreement and (v) has independently and without reliance upon the Contributor, and based on such information as the Issuer and its agents have deemed appropriate, made its own analysis and decision to enter into this Agreement, as applicable, except that the Issuer and PPM have relied upon the Contributor's express representations, warranties, covenants, and indemnities in this Agreement. Each of the Issuer and its agents (other than BAS) acknowledges that the Contributor has not given the Issuer or any of its agents (other than BAS) any investment advice, credit information or opinion on whether the acquisition of the Contributed Assets or the assumption of the Assumed Obligations is prudent.

(g) Each of the Issuer and its agents (other than BAS) acknowledges that (i) the Contributor currently may have, and later may come into possession of, information with respect to the Contributed Assets, the Borrowers, any Obligor or any of their Affiliates that is not known to either the Issuer or any of its agents (other than BAS) and that may be material to a decision to acquire the Contributed Assets and the Participations, and assume the Assumed Obligations (the "Issuer Excluded Information"), (ii) the Issuer has determined to acquire the Contributed Assets and the Participations, and assume the Assumed Obligations notwithstanding its lack of knowledge of the Issuer Excluded Information, and (iii) the Contributor shall have no liability to either the Issuer or any of its agents, and each of the Issuer and its agents (other than BAS) waives and releases any claims that it might have against the Contributor or any Contributor Indemnitee, whether under applicable securities laws or otherwise, with respect to the nondisclosure of the Issuer Excluded Information in connection with the transactions contemplated hereby; provided, however, that the Issuer Excluded Information shall not and does not affect the truth or accuracy of the Contributor's representations or warranties in this Agreement.

(h) No broker, finder, or other Entity acting under the Issuer's authority is entitled to any broker's commission or other fee in connection with the transactions contemplated by this Agreement for which the Contributor could be responsible.

(i) No interest in the Contributed Assets or the Participations is being acquired by or on behalf of an Entity which is, or at any time while the Contributed Assets or the Participations are held thereby will be, a Benefit Plan.

(j) The Issuer, individually and on behalf of its agents (other than BAS) acknowledges that (i) it has received copies of the Escrowed Credit Documents and (ii) without in any way limiting the representations and warranties of the Contributor contained in this Agreement, it is, individually and on behalf of its agents, assuming all risk with respect to the accuracy or sufficiency of the Escrowed Credit Documents prepared by any Entity other than BANA, the Contributor or any of their respective Affiliates.

(k) The Issuer is an "accredited investor" as defined in Rule 501 under the Securities Act.

(l) No proceedings are (i) pending against the Issuer or (ii) to the best of the Issuer's knowledge, threatened against the Issuer before any relevant Governmental Authority

that, in the aggregate, will materially and adversely affect any action taken or to be taken by the Issuer under this Agreement.

5.2 Except as expressly stated in this Agreement and the Assignments, the Issuer makes no representations or warranties, express or implied, with respect to the transactions contemplated herein or therein.

5.3 The Issuer acknowledges that (a) the Contributor's contribution of the Contributed Assets and the Participated Loans to Issuer, and Issuer's assumption of the Assumed Obligations, are absolute and irrevocable, and (b) neither the Issuer nor any of its agents (including PPM) shall have recourse to the Contributor except for (i) the Contributor's breaches of its representations, warranties, or covenants, and (ii) the Contributor's indemnities, in each case as expressly stated in this Agreement.

6. Indemnification

6.1 The Contributor shall indemnify, defend, and hold the Issuer and its officers, managers, agents, members, controlling Entities and employees (collectively, "Issuer Indemnitees") harmless from and against any liability, claim, cost, loss, judgment, damage or expense (including reasonable attorneys' fees and expenses) that the Issuer Indemnitees incur or suffer as a result of, or arising out of (a) the Contributor's breach of any of the Contributor's representations, warranties, covenants or agreements in this Agreement (including *Section 4.1(y)*, whether or not settled in cash), (b) any obligation of the Issuer or the Contributor to disgorge, in whole or in part, or otherwise reimburse (by setoff or otherwise) any Borrower, Obligor, Agent or other Entity for any payments, property (including Collateral), setoffs or recoupments received, applied or effected by or for the account of the Contributor under or in connection with the Contributed Assets, the Participations or otherwise from, against or on account of any Borrower or Obligor and (c) any Retained Obligation; provided, however, that the amount of all such liabilities, claims, costs, losses, judgments, damages or expenses (including reasonable attorneys' fees and expenses) shall not exceed \$177,739,980 in the aggregate.

6.2 The Issuer shall indemnify, defend, and hold the Contributor and its officers, managers, agents, members, controlling Entities, and employees (collectively, "Contributor Indemnitees") harmless from and against any liability, claim, cost, loss, judgment, damage, or expense (including reasonable attorneys' fees and expenses) that Contributor Indemnitees incur or suffer as a result of or arising out of (a) the Issuer's breach of any of the Issuer's representations, warranties, covenants or agreements in this Agreement, (b) the Contributor acting or refraining to act pursuant to any directive of the Issuer and (c) any Assumed Obligation; provided, however, that the amount of all such liabilities, claims, costs, losses, judgments, damages or expenses (including reasonable attorneys' fees and expenses) shall not exceed \$177,739,980 in the aggregate.

6.3 If a third party commences any action or makes any demand against either Party for which such Party ("Indemnified Party") is entitled to indemnification under this Agreement, such Indemnified Party will promptly notify the other Party ("Indemnifying Party") in writing of such action or demand; provided, however, that if the Indemnified Party assumes the defense of

the action and fails to provide prompt notice to the Indemnifying Party, such failure shall not limit in any way the Indemnifying Party's obligation to indemnify the Indemnified Party except to the extent that such failure materially prejudices the Indemnifying Party's ability to defend the action. The Indemnifying Party may, at its own expense and without limiting its obligation to indemnify the Indemnified Party, participate in the defense of such action with counsel reasonably satisfactory to the Indemnified Party, or the Indemnifying Party may, at its own expense and without limiting its obligation to indemnify the Indemnified Party, assume the defense of such action with counsel reasonably acceptable to the Indemnified Party. In any event, the Party that has assumed the defense of such action shall provide the other Party with copies of all notices, pleadings, and other papers filed or served in such action. Neither Party shall make any settlement or adjustment without the other Party's prior written consent, which consent (a) in the case of the Indemnifying Party will not be unreasonably withheld if the settlement or adjustment involves only the payment of money damages by the Indemnifying Party and (b) in the case of the Indemnified Party may be withheld for any reason if the settlement or adjustment involves performance or admission by the Indemnified Party.

6.4 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of this Agreement, and it is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

7. Costs and Expenses.

7.1 The Contributor shall pay all bills for Agent Expenses and such similar amounts related to the Bilateral Loans incurred, arising, or otherwise chargeable to the period prior to but excluding the Agreement Date and chargeable to the Contributor as a Lender under the Credit Documents. The Issuer shall pay all other Agent Expenses and such other similar amounts related to the Bilateral Loans. If either the Contributor or the Issuer receives a bill for Agent Expenses or such similar amounts related to the Bilateral Loans, the Contributor shall pay to the Agent that portion of the bill for Agent Expenses incurred or such other similar amounts related to the Bilateral Loans, arising, or otherwise chargeable to the period prior to but excluding the Agreement Date and the Issuer shall pay to the Agent or the Contributor, as the case may be, the balance. If a Party pays any Agent Expenses or such other similar amounts incurred by the Contributor or any of its Affiliates related to the Bilateral Loans for which the other Party is responsible pursuant to this Section 7.1, the other Party shall, promptly upon the written request of the Party paying such amounts, reimburse such paying Party for the full amount paid on such other Party's behalf. Solely with respect to the Bilateral Loans, the Issuer hereby agrees to reasonably cooperate with the Contributor and its Affiliates in their efforts to collect in accordance with the applicable Credit Documents from any Borrower on behalf of the Contributor and its Affiliates any and all expenses incurred prior to the Agreement Date and remaining unpaid as of the Agreement Date, at the sole expense of the Contributor; *provided*, however, that Issuer shall not be required to institute collection proceedings or to take any other action that in the reasonable judgment of the Issuer (A) is prohibited under applicable law, rule, order, contract, or the Contributed Assets, (B) could expose the Issuer to any obligation, liability or expense that in the Issuer's reasonable judgment is material and for which the Issuer has not been provided adequate indemnity or (C) could reasonably be expected to impair the

collectibility of or otherwise reduce the Contributed Assets. In the event that within 90 days after the Agreement Date the Issuer receives a payment representing the reimbursement of expenses incurred by the Contributor within 120 days prior to the Agreement Date in respect of any Bilateral Loan or the Credit Documents related thereto, the Issuer shall pay any such amounts (free of any withholding, setoff, recoupment or deduction of any kind except as required by law) promptly to the Contributor.

7.2 Except as otherwise expressly agreed to by the Parties, each of the Contributor and the Issuer shall bear the legal and other costs and expenses for preparing, negotiating, executing, and implementing this Agreement and any related documents and consummating the transactions contemplated under this Agreement which are incurred by it or its agents.

7.3 Any applicable Transfer Fees shall be paid by the Contributor for the account of (and shall be reimbursed by the Issuer to the extent of 50% thereof) the Issuer on or before the Agreement Date as provided in Annex A.

8. Distributions; Interest and Fees; Payments.

8.1 (a) If at any time after the Agreement Date, the Contributor receives a Distribution (excluding, for the avoidance of doubt, a Retained Interest Distribution), the Contributor shall (i) accept and hold the Distribution for the account and sole benefit of the Issuer, (ii) have no equitable or beneficial interest in the Distribution, and (iii) deliver the Distribution (free of any withholding, setoff, recoupment, or deduction of any kind except as required by law) promptly (but in the case of a cash Distribution, in no event later than two (2) Business Days after the date on which the Contributor receives it) to the Issuer in the same form received and, when necessary or appropriate, with the Contributor's endorsement (without recourse, representation, or warranty), except to the extent prohibited under any applicable law, rule, or order. If the Contributor fails to pay any cash Distribution to the Issuer within two (2) Business Days after receiving it, then the Contributor will pay interest on such payment for the period from the day on which such payment is actually received by the Contributor to (but excluding) the day such payment is actually paid to the Issuer, in accordance with Section 8.5.

(b) If a Distribution includes securities, the Contributor shall, to the extent permissible by law, endorse (without recourse) or use reasonable efforts to assist the Issuer to cause to be registered in the Issuer's name, or such name as the Issuer may direct (at the Issuer's sole expense) in writing and deliver such securities to the Issuer or to such Entity as the Issuer may direct as soon as practicable. Pending such transfer, the Contributor shall hold the same on behalf and for the sole benefit of the Issuer and the Contributor shall have no legal, equitable or beneficial interest in any such Distribution. Subject to applicable law, the Issuer is entitled to receive any Distribution to be remitted by the Contributor under this Agreement without the withholding of any tax. If the Contributor receives a Distribution which it is required to remit to the Issuer, the Issuer will furnish to the Contributor such forms, certifications, statements and other documents as the Contributor may reasonably request in writing to evidence the Issuer's exemption from the withholding of any tax imposed by the United States of America or any other jurisdiction, whether domestic or foreign, or to enable the Contributor to comply with any applicable laws or regulations relating thereto, and the Contributor may refrain from remitting

such Distribution until such forms, certifications, statements, and other documents have been so furnished.

(c) If a Distribution received by the Contributor and transferred to the Issuer pursuant to this Section 8.1 has been made to the Contributor wrongfully or in error, and is required to be returned or disgorged by the Contributor, the Issuer shall promptly return such Distribution to the Contributor together with all related interest and charges payable by the Contributor.

8.2 (a) If at any time after the Agreement Date, the Issuer receives from any Borrower a Retained Interest Distribution, the Issuer shall (i) accept and hold such Retained Interest Distribution for the account and sole benefit of the Contributor, (ii) have no equitable or beneficial interest in such Retained Interest Distribution and (iii) deliver such Retained Interest Distribution (free of any withholding, setoff, recoupment, or deduction of any kind except as required by law) promptly (but in the case of a cash Retained Interest Distribution in no event later than two (2) Business Days after the date on which the Issuer receives it) to the Contributor in the same form received and, when necessary or appropriate, with the Issuer's endorsement (without recourse, representation, or warranty), except to the extent prohibited under any applicable law, rule, or order. If the Issuer fails to pay any cash Retained Interest Distribution to the Contributor within two (2) Business Days of receipt thereof, then the Issuer will pay interest on such Retained Interest Distribution for the period from the day on which such Retained Interest Distribution is actually received by the Issuer to (but excluding) the day such Retained Interest Distribution is actually paid to the Contributor, in accordance with Section 8.5.

(b) If a Retained Interest Distribution includes securities, the Issuer shall, to the extent permissible by law, endorse (without recourse), or use reasonable efforts to assist the Contributor to cause to be registered in the Contributor's name, or such name as the Contributor may direct (at the Contributor's sole expense) in writing, and deliver such securities to the Contributor or to such Entity as the Contributor may direct as soon as practicable. Pending such transfer, the Issuer shall hold the same on behalf and for the sole benefit of the Contributor and the Issuer shall have no legal, equitable or beneficial interest in any such Retained Interest Distribution. Subject to applicable law, the Contributor is entitled to receive any Retained Interest Distribution to be remitted by the Issuer under this Agreement without the withholding of any tax. If the Issuer receives a Retained Interest Distribution which it is required to remit to the Contributor, the Contributor will furnish to the Issuer such forms, certifications, statements and other documents as the Issuer may reasonably request in writing to evidence the Contributor's exemption from the withholding of any tax imposed by the United States of America or any other jurisdiction, whether domestic or foreign, or to enable the Issuer to comply with any applicable laws or regulations relating thereto, and the Issuer may refrain from remitting such Retained Interest Distribution until such forms, certifications, statements, and other documents have been so furnished.

(c) If a Retained Interest Distribution received by the Issuer and transferred to the Contributor pursuant to this Section 8.2 has been made to the Issuer wrongfully or in error, and is required to be returned or disgorged by the Issuer, the Contributor shall promptly return

such Retained Interest Distribution to the Issuer together with all related interest and charges payable by the Issuer.

8.3 The treatment of Pre-Agreement Date Accruals is set forth on Annex A.

8.4 Except as provided in Section 8.1 or 8.2, all payments made by the Contributor to the Issuer or by the Issuer to the Contributor (except, however, for the Membership Interest and the Notes) under this Agreement shall be made in the lawful currency of the United States by wire transfer of immediately available funds to the Contributor or the Issuer, as applicable, in accordance with the wire instructions set forth below the relevant Party's signature on the signature page to this Agreement.

8.5 With respect to the payment of any funds or other property under this Agreement (including the delivery of Distributions under Section 8.1 and Retained Interest Distributions under Section 8.2), whether from the Contributor to the Issuer or from the Issuer to the Contributor, (a) the Party required to deliver a Distribution or a Retained Interest Distribution may withhold therefrom any tax required by law to be withheld, and (b) the Party failing to make full payment of any amount when due shall, upon demand by the other Party, pay such defaulted amount together with interest on it (for each day from (and including) the date when due to (but excluding) the date when actually paid) at a rate equal to the LIBO Rate.

9. Notices.

9.1 All communications between the Parties or notices or other information sent under this Agreement shall be in writing, hand-delivered or sent by overnight courier or telecopier, addressed to the relevant Party at its address or facsimile number set forth below the relevant Party's signature on the signature page to this Agreement or at such other address or facsimile number as such Party may request in writing. All such communications and notices shall be effective upon receipt.

9.2 From the Agreement Date, if the Contributor receives any notices, correspondence or other documents in respect of the Contributed Assets or any Credit Document that, to the best of the Contributor's knowledge, were not sent to the Lenders generally, the Contributor shall promptly forward them to the Issuer.

10. Further Transfers.

10.1 The Issuer may sell, assign, grant a participation in, or otherwise transfer all or any portion of the Contributed Assets or the Participations, its rights under this Agreement, or any interest in the Contributed Assets or the Participations (the "Transferred Portions") without the Contributor's prior consent; provided, however, that (a) other than a transfer to a transferee to whom the Contributor will not have any direct or indirect continuing duties, obligations or liabilities after the Agreement Date, no transfer shall cause the Transferred Portions, or any portion of them or interest in them, to constitute "plan assets" within the meaning of ERISA; (b) no transfer shall constitute a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA and Section 4975 of the Code; (c) such sale, assignment, participation or transfer shall comply with any applicable requirements in the Transaction Documents and shall not

violate any applicable laws, rules or regulations, including any applicable securities laws, rules or regulations; (d) notwithstanding any such sale, assignment, participation or transfer, unless the Contributor otherwise consents in writing (which consent the Contributor shall not unreasonably withhold or delay), (i) the Issuer's obligations to the Contributor under this Agreement shall remain in full force and effect until fully paid, performed, and satisfied and (ii) the Contributor shall continue to deal solely and directly with the Issuer in connection with the Issuer's obligations under this Agreement; and (e) the Transferred Portions with respect to the representations and warranties of the Contributor contained in Section 4.1 include the benefit of only Sections 4.1(a) through Section 4.1(w) thereof.

10.2 The Contributor may not assign its rights, or delegate its obligations, under this Agreement unless the Issuer and the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes) otherwise consent in writing (which consents shall not be unreasonably withheld or delayed).

11. Voting.

On and after the Trade Date, (a) the Issuer shall have sole authority to exercise all voting and other rights and remedies under the Contributed Assets, and (b) if for any reason the Contributor is entitled to exercise any such rights (including the right to vote) after the Agreement Date, the Contributor (i) shall not take any action with respect to the Contributed Assets other than in accordance with the prior written instructions of the Issuer, and (ii) shall take (or refrain from taking) any action with respect to the Contributed Assets in accordance with the prior written instructions of the Issuer except (A) as prohibited under applicable law, rule, order, contract or the Contributed Assets, or (B) if following such instructions might (in the Contributor's reasonable determination) expose the Contributor to any obligation, liability or expense that in the Contributor's reasonable judgment is material and for which the Contributor has not been provided adequate indemnity.

12. Exercise of Rights.

12.1 No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by the Parties and the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes) has provided its prior written consent thereto, and no waiver of any provision of this Agreement, nor consent to any departure by either Party from it, shall be effective unless it is in writing and signed by the affected Party and the Controlling Party (so long as the Controlling Party is the Class A Credit Enhancer or a Majority of the Class A Notes) has provided its prior written consent thereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

12.2 No failure on the part of a Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver hereof by such Party, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of each Party provided herein (a) are cumulative and are in addition to, and are not exclusive of, any rights or remedies provided by

law (except as otherwise expressly set forth in this Agreement) and (b) are not conditional or contingent on any attempt by such Party to exercise any of its rights under any other related document against the other Party or any other Entity.

13. Survival; Successors and Assigns; Third Party Beneficiary.

13.1 All representations, warranties, covenants, indemnities and other provisions made by the Parties shall be considered to have been relied upon by the Parties, shall be true and correct as of the Trade Date and the Agreement Date, as applicable, and shall survive the execution, delivery, and performance of this Agreement and the other Operative Documents as provided herein.

13.2 This Agreement, including the representations, warranties, covenants and indemnities contained in this Agreement, shall inure to the benefit of, be binding upon and be enforceable by and against the Parties and their respective successors and permitted assigns.

13.3 The Class A Credit Enhancer and the Trustee, for the benefit of the secured parties under the Indenture, and their respective successors and assigns shall be third-party beneficiaries to the provisions of this Agreement.

13.4 The Contributor acknowledges and agrees that the rights, remedies, interests, powers and privileges of the Contributor under the BANA Contribution Agreement that are assigned by the Contributor to the Issuer under this Agreement and all of the Issuer's rights, remedies, interests, powers and privileges under this Agreement shall be assigned by the Issuer to the Trustee for the benefit of the secured parties under the Indenture.

14. Parties' Other Relationships.

Each Party and any of its Affiliates may engage in any kind of lawful business or relationship with any Borrower, any Obligor or any of their respective Affiliates without liability to the other Party, or any obligation to disclose such business or relationship to the other Party.

15. Entire Agreement; Conflict.

15.1 This Agreement and the other Operative Documents constitute the entire agreement of the Parties with respect to the respective subject matters thereof, and supersede all previous and contemporaneous negotiations, promises, covenants, agreements (including the Trade Confirmation), understandings, and representations on such subjects, all of which have become merged and finally integrated into this Agreement and the other Operative Documents.

15.2 This Agreement supplements the Assignments. As between the Issuer and the Contributor, if there is any inconsistency or conflict between this Agreement and any of the other Operative Documents, the provisions of this Agreement shall govern and control.

16. Counterparts; Telecopies.

This Agreement and the other Operative Documents may be executed by telecopy in multiple counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Transmission by telecopier of an executed counterpart of any Operative Document shall be deemed to constitute due and sufficient delivery of such counterpart. Each fully executed counterpart of this Agreement and any other Operative Document shall be deemed to be a duplicate original.

17. Severability.

The illegality, invalidity, or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

18. Governing Law.

THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT, AND ANY CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED AND DETERMINED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION).

19. Waiver of Trial by Jury.

THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

20. Jurisdiction.

20.1 The Parties irrevocably and unconditionally submit to and accept the exclusive jurisdiction of the United States District Court for the Southern District of New York located in the Borough of Manhattan or the courts of the State of New York located in the County of New

York for any action, suit, or proceeding arising out of or based upon this Agreement or any matter relating to it, and waives any objection it may have to the laying of venue in any such court or that such court is an inconvenient forum or does not have personal jurisdiction over it.

20.2 The Parties irrevocably agree that, should either Party institute any legal action or proceeding in any jurisdiction (whether for an injunction, specific performance, damages or otherwise) in relation to this Agreement, no immunity (to the extent that it may at any time exist, whether on the grounds of sovereignty or otherwise) from such action or proceeding shall be claimed by it or on its behalf, any such immunity being hereby irrevocably waived, and each Party irrevocably agrees that it and its assets are, and shall be, subject to such legal action or proceeding in respect of its obligations under this Agreement.

21. Interpretation.

21.1 This Agreement includes the Annexes and any documents attached as exhibits or schedules to this Agreement.

21.2 The Annexes may supplement, change, or supersede other provisions of this Agreement. If there is any inconsistency between the provisions of the Annexes and the other provisions of this Agreement, the Annexes will prevail.

21.3 Terms used in the singular or the plural include the plural and the singular, respectively; "includes" and "including" are not limiting; and "or" is not exclusive.

21.4 Any reference to a Party includes the Party's successors and permitted assigns.

21.5 Unless otherwise indicated, any reference to:

(a) this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may at any time before the Agreement Date be, in effect as modified, amended, or supplemented as of the Agreement Date;

(b) a statute, law, order, rule, or regulation shall be construed as a reference to such statute, law, order, rule, or regulation as it may have been, or may at any time before the Agreement Date be, in effect as modified, amended, or supplemented as of the Agreement Date; and

(c) any Section or Annex shall refer, respectively, to such Section hereof or Annex hereto.

21.6 Section, Annex, and other headings and captions are included solely for convenience of reference and are not intended to affect the interpretation of any provisions of this Agreement.

21.7 This Agreement shall be deemed to have been jointly drafted, and no provision of it shall be interpreted or construed for or against any Party because such Party purportedly prepared or requested such provision, any other provision, or the Agreement as a whole.

22. Treatment as Contribution and Absolute Assignment.

22.1 The Parties intend and agree that the transfers made pursuant to this Agreement shall constitute contributions and absolute assignments of the Contributed Assets and the Participations for all legal, accounting, tax and other purposes, and agree to treat such transfers as contributions and absolute assignments of the Contributed Assets and the Participations for all purposes, including tax, accounting and otherwise. The Parties will file all federal, state and local tax returns and reports in a manner consistent with the preceding sentence.

22.2 Notwithstanding the foregoing intention of the Parties hereto, if the transfer of the Contributed Assets, the Participations and related rights is not effective as a contribution and an absolute assignment, then the Contributor shall be deemed to have granted and does hereby grant to the Issuer a first priority security interest in the Contributed Assets, the Participations and related rights to secure its obligations to the Issuer under this Agreement. This Agreement shall constitute a security agreement under applicable law, and the Contributor agrees to execute such documents and take such other actions as shall be necessary or advisable to ensure, protect and preserve such security interests.

23. Transfer Notice. With respect to each Bankrupt Loan, the Parties shall execute and deliver, and the Issuer shall promptly file or cause to be filed with the applicable Bankruptcy Court(s) to the extent required by the Bankruptcy Rules, a Transfer Notice to duly reflect the assignment of the Contributed Assets to the Issuer under Bankruptcy Rule 3001(e). The Contributor (a) agrees to take such other reasonably steps as the Issuer may request to help the Issuer effect and evidence the assignment of the Contributed Assets to the Issuer in the Bankruptcy Case, (b) waives notice of, and the right to object to, any filing in respect thereof under Bankruptcy Rule 3001(e) and (c) agrees that it will not object to any such filing.

24. Disclosure.

24.1 Each Party agrees that, without the prior consent of the other Party, it shall not disclose the contents of this Agreement (including the purchase price for each Loan and the fair market value of any of the Contributed Assets or the Participations) to any Entity, except that any Party may make any such disclosure (a) as required to implement or enforce this Agreement, (b) if required to do so by any law, court, or regulation, (c) to any Governmental Authority or self-regulatory Entity having or asserting jurisdiction over it, (d) if its attorneys advise it that it has a legal obligation to do so or that failure to do so may result in it incurring a liability to any other Entity, (e) to its professional advisors and auditors and other parties relevant to the negotiation, administration and performance of the transactions contemplated by this Agreement or (f) as set forth in Section 24.2, the Issuer may disclose the contents of this Agreement (but not the purchase price for each Loan and the fair market value of any of the Contributed Assets or the Participations) to any proposed transferee, assignee, participant, or other Entity proposing to enter into contractual relations with the Issuer in respect of this Agreement or the Transferred

Portions or any part of them. The Issuer agrees to comply with the requirements of the Credit Documents regarding confidentiality.

24.2 The Issuer may disclose the contents of this Agreement (but not the purchase price for each Loan and the fair market value of any of the Contributed Assets or the Participations) to any proposed transferee, assignee, participant, or other Entity proposing to enter into contractual relations with the Issuer in respect of this Agreement or the Transferred Portions or any part of them.

25. Non-Petition Covenant.

Notwithstanding any prior termination of this Agreement, the Contributor shall not, prior to the date that is one year and one day after the repayment of all obligations of the Issuer under or in connection with the Indenture, acquiesce, petition or otherwise invoke or cause the Issuer to invoke the process of any court or Governmental Authority for the purpose of commencing or sustaining a case against the Issuer under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Issuer or any substantial part of its properties, or ordering the winding up or liquidation of the affairs of the Issuer.

26. Limitation on Recourse.

The Contributor (and any successor to the Contributor) shall have recourse solely to the Contributed Assets and the Participations for the payment and performance of all of the obligations of the Issuer under this Agreement. Upon final realization of the Contributed Assets and the Participations, any outstanding obligations of the Issuer hereunder shall be extinguished and the Contributor shall not be entitled to take any further steps against the Issuer to recover any sums due from the Issuer but still unpaid.

[Signatures appear on the following page]

IN WITNESS WHEREOF, this Agreement has been entered into as of the date first written above.

BANC OF AMERICA STRATEGIC SOLUTIONS, LLC

By: **BANC OF AMERICA STRATEGIC
SOLUTIONS, INC, as its Manager**

By: Mary J. Cahillane

Name: Mary J. Cahillane

Title: Senior Vice President

c/o Bank of America, N.A.
100 North Tryon Street, 25th Floor
Charlotte, North Carolina 28255
Telephone: 704-388-7020
Facsimile: 704 -386-1175

ENDEAVOUR, LLC

By: **ENDEAVOUR MANAGER, INC., as its Manager**

By: _____
Andrew L. Stidd
President

Endeavour, LLC
c/o Endeavour Manager, Inc.
c/o Global Securitization Services, LLC
400 West Main, Suite 338
Babylon, New York 11702
Telephone: 631-507-4700
Facsimile: 212-302-8767

with a copy:

PPM America
225 West Wacker Drive, Suite 1200
Chicago, Illinois 60606
Attention: Special Investment
Telephone: 312-634-2501
Facsimile: 312-634-0741

IN WITNESS WHEREOF, this Agreement has been entered into as of the date first written above.

BANC OF AMERICA STRATEGIC SOLUTIONS, LLC


By: BANC OF AMERICA STRATEGIC
SOLUTIONS, INC, as its Manager

By: _____
Name: Mary J. Cahillane
Title: Senior Vice President

c/o Bank of America, N.A.
100 North Tryon Street, 25th Floor
Charlotte, North Carolina 28255
Telephone: 704-388-7020
Facsimile: 704-386-1175

ENDEAVOUR, LLC

By: ENDEAVOUR MANAGER, INC., as its Manager

By:  _____
Andrew L. Stidd
President

Endeavour, LLC
c/o Endeavour Manager, Inc.
c/o Global Securitization Services, LLC
400 West Main, Suite 338
Babylon, New York 11702
Telephone: 631-507-4700
Facsimile: 212-302-8767

with a copy:

PPM America
225 West Wacker Drive, Suite 1200
Chicago, Illinois 60606
Attention: Special Investment
Telephone: 312-634-2501
Facsimile: 312-634-0741

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**MASTER SCHEDULE
TO
CONTRIBUTION AGREEMENT
Dated October 23, 2001**

Relationship Name

Loan Description

Loan
Number

H K MEDICAL TECHNOLOGIES	TML dated as of 3/15/00 (The Herring Group, Inc)	013-01
	REV dated as of 3/12/98 (HK Medical Technologies, Inc.)	013-02
	TML dated as of 8/15/00 (Herring International, Inc. and Herring Impulsora S.A. de C.V.)	013-03
	TML dated as of 8/15/00 (Herring Impulsora Monterrey, SA de CV and Herring International, Inc)	013-04
	TML dated as of 8/15/00 (Herring Impulsora Toluca SA de CV and Herring International, Inc)	013-05
	TML dated as of 8/97 (Herring International, Inc)	013-06
	TML dated 8/15/00 (Tim and Adrienne Herring)	013-07

HK MEDICAL TECHNOLOGIES**Section 1: Information Relating to Definitions in Contribution Agreement:**

"Borrower"	means Herring Group, Inc., a Texas corporation.
"Credit Agreement"	means that certain Loan Agreement dated as of May 15, 2000, by the Borrower and Bank of America, N.A.
"Loan"	Term loan in an outstanding principal amount as of the Trade Date of: see Addendum I to Annex A.
"Bankruptcy Case"	N/A.
"Bankruptcy Court"	N/A.
"Bankruptcy Orders"	N/A.
"Bar Date"	N/A.
"Bilateral ABL"	No.
"Bilateral Loan"	Yes.
"Collateral Type"	<u>Collateral Description</u> Due diligence is incomplete as to the Business Assets of HK Medical, including as a result of UCC lien searches conducted against HK Medical as set forth in the UCC Search Chart, which search results show that no UCC-1 financing statements in favor of BANA are on file in such jurisdictions.
"Commitment"	Total commitment amount as of the Trade date: see Addendum I to Annex A.
"Equity Interests"	None.
"Participated Loan"	No.
"Proof of Claim"	N/A.
"Required Consents"	None.
"Settled Without Accrued Interest"	No.
"Transfer Fee"	None.
"Unfunded Commitment"	Aggregate portion of Commitment available for draw by the Borrower as of the Trade Date: see Addendum I to Annex A.

Section 3.2: Possessory Bilateral Collateral:**Collateral Description**

None.

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Section 4: Exceptions to Representations and Warranties in Contribution Agreement

<u>Section</u>	<u>Exception</u>
4.01(g): Commitments	None
4.01(k): Contributor as Lender	N/A
4.01(l): Contributor not "insider"	N/A
4.01(n): No notice of voidable payments	N/A
4.01(u): No preference payments	N/A
4.01(y): Bilateral Loan Cash Purchase Price	
4.01(cc): Bilateral ABL Borrowing Base Certificate as to which no subsequent field audit conducted	N/A

Section 8.3: Pre-Agreement Date Accruals:

<u>Item</u>	<u>Amount</u>
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HK MEDICAL TECHNOLOGIES

Section 1: Information Relating to Definitions in Contribution Agreement:

"Borrower"	means HK Medical Technologies, Inc., a Texas corporation.
"Credit Agreement"	means that certain Loan Agreement dated as of March 12, 1998, by the Borrower and Bank of America, N.A.
"Loan"	Revolving loan in an outstanding principal amount as of the Trade Date of: see Addendum I to Annex A.
"Bankruptcy Case"	N/A.
"Bankruptcy Court"	N/A.
"Bankruptcy Orders"	N/A.
"Bar Date"	N/A.
"Bilateral ABL"	No.
"Bilateral Loan"	Yes.
"Collateral Type"	<u>Collateral Description</u> Due diligence is incomplete as to the Business Assets of HK Medical, including as a result of UCC lien searches conducted against HK Medical as set forth in the UCC Search Chart, which search results show that no UCC-1 financing statements in favor of BANA are on file in such jurisdictions.
"Commitment"	Total commitment amount as of the Trade Date: see Addendum I to Annex A.
"Equity Interests"	None.
"Participated Loan"	No.
"Proof of Claim"	N/A.
"Required Consents"	None.
"Settled Without Accrued Interest"	No.
"Transfer Fee"	None.
"Unfunded Commitment"	Aggregate portion of Commitment available for draw by the Borrower as of the Trade Date: see Addendum I to Annex A.

Section 3.2: Possessory Bilateral Collateral:Collateral Description

None.

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Section 4: Exceptions to Representations and Warranties in Contribution Agreement:

<u>Section</u>	<u>Exception</u>
4.01(g): Commitments	None
4.01(k): Contributor as Lender	N/A
4.01(l): Contributor not "insider"	N/A
4.01(n): No notice of voidable payments	N/A
4.01(u): No preference payments	N/A
4.01(y): Bilateral Loan Cash Purchase Price	
4.01(ee): Bilateral ABL Borrowing Base Certificate as to which no subsequent field audit conducted	N/A

Section 8.3: Pre-Agreement Date Accruals:

<u>Item</u>	<u>Amount</u>
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HK MEDICAL TECHNOLOGIES

Section 1: Information Relating to Definitions in Contribution Agreement:

"Borrower"	means Herring International, Inc., a Texas corporation, and Herring Impulsora, S.A. de C.V., jointly and severally.
"Credit Agreement"	means that certain Amended and Restated Loan Agreement dated as of August 15, 2000, by the Borrower and Bank of America, N.A.
"Loan"	Term loan in an outstanding principal amount as of the Trade Date of: see Addendum I to Annex A.
"Bankruptcy Case"	N/A.
"Bankruptcy Court"	N/A.
"Bankruptcy Orders"	N/A.
"Bar Date"	N/A.
"Bilateral ABL"	No.
"Bilateral Loan"	Yes.
"Collateral Type"	<u>Collateral Description</u> Due diligence is incomplete as to the Business Assets of HK Medical, including as a result of UCC lien searches conducted against HK Medical as set forth in the UCC Search Chart, which search results show that no UCC-1 financing statements in favor of BANA are on file in such jurisdictions.
"Commitment"	Total commitment amount as of the Trade Date: see Addendum I to Annex A.
"Equity Interests"	None.
"Participated Loan"	No.
"Proof of Claim"	N/A.
"Required Consents"	None.
"Settled Without Accrued Interest"	No.
"Transfer Fee"	None.
"Unfunded Commitment"	Aggregate portion of Commitment available for draw by the Borrower as of the Trade Date: see Addendum I to Annex A.

Section 3.2: Possessory Bilateral Collateral:Collateral Description

None.

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Section 4: Exceptions to Representations and Warranties in Contribution Agreement:

<u>Section</u>	<u>Exception</u>
4.01(g): Commitments	None
4.01(k): Contributor as Lender	N/A
4.01(l): Contributor not "insider"	N/A
4.01(n): No notice of voidable payments	N/A
4.01(u): No preference payments	N/A
4.01(y): Bilateral Loan Cash Purchase Price	
4.01(cc): Bilateral ABL Borrowing Base Certificate as to which no subsequent field audit conducted	N/A

Section 8.3: Pre-Agreement Date Accruals:

<u>Item</u>	<u>Amount</u>
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HK MEDICAL TECHNOLOGIES

Section 1: Information Relating to Definitions in Contribution Agreement:

"Borrower"	means Herring International, Inc., a Texas corporation, and Herring Impulsora Monterrey, S.A. de C.V., jointly and severally.
"Credit Agreement"	means that certain Amended and Restated Loan Agreement dated as of August 15, 2000, by the Borrower and Bank of America, N.A.
"Loan"	Term loan in an outstanding principal amount as of the Trade Date of: see Addendum I to Annex A.
"Bankruptcy Case"	N/A.
"Bankruptcy Court"	N/A.
"Bankruptcy Orders"	N/A.
"Bar Date"	N/A.
"Bilateral ABL"	No.
"Bilateral Loan"	Yes.
"Collateral Type"	<u>Collateral Description</u> Due diligence is incomplete as to the Business Assets of HK Medical, including as a result of UCC lien searches conducted against HK Medical as set forth in the UCC Search Chart, which search results show that no UCC-1 financing statements in favor of BANA are on file in such jurisdictions.
"Commitment"	Total commitment amount as of the Trade Date: see Addendum I to Annex A.
"Equity Interests"	None.
"Participated Loan"	No.
"Proof of Claim"	N/A.
"Required Consents"	None.
"Settled Without Accrued Interest"	No.
"Transfer Fee"	None.
"Unfunded Commitment"	Aggregate portion of Commitment available for draw by the Borrower as of the Trade Date: see Addendum I to Annex A.

Section 3.2: Possessory Bilateral Collateral:Collateral Description

None.

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Section 4: Exceptions to Representations and Warranties in Contribution Agreement:

<u>Section</u>	<u>Exception</u>
4.01(g): Commitments	None
4.01(k): Contributor as Lender	N/A
4.01(l): Contributor not "insider"	N/A
4.01(n): No notice of voidable payments	N/A
4.01(u): No preference payments	N/A
4.01(y): Bilateral Loan Cash Purchase Price	
4.01(cc): Bilateral ABL Borrowing Base Certificate as to which no subsequent field audit conducted	N/A

Section 8.3: Pre- Agreement Date Accruals:

<u>Item</u>	<u>Amount</u>
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HK MEDICAL TECHNOLOGIES

Section 1: Information Relating to Definitions in Contribution Agreement:

"Borrower"	means Herring International, Inc., a Texas corporation, and Herring Impulsora Toluca, S.A. de C.V., jointly and severally.
"Credit Agreement"	means that certain Amended and Restated Loan Agreement dated as of August 15, 2000, by the Borrower and Bank of America, N.A.
"Loan"	Term loan in an outstanding principal amount as of the Trade Date of: see Addendum I to Annex A.
"Bankruptcy Case"	N/A.
"Bankruptcy Court"	N/A.
"Bankruptcy Orders"	N/A.
"Bar Date"	N/A.
"Bilateral ABL"	No.
"Bilateral Loan"	Yes.
"Collateral Type"	<u>Collateral Description</u> Due diligence is incomplete as to the Business Assets of HK Medical, including as a result of UCC lien searches conducted against HK Medical as set forth in the UCC Search Chart, which search results show that no UCC-1 financing statements in favor of BANA are on file in such jurisdictions.
"Commitment"	Total commitment amount as of the Trade Date: see Addendum I to Annex A.
"Equity Interests"	None.
"Participated Loan"	No.
"Proof of Claim"	N/A.
"Required Consents"	None.
"Settled Without Accrued Interest"	No.
"Transfer Fee"	None.
"Unfunded Commitment"	Aggregate portion of Commitment available for draw by the Borrower as of the Trade Date: see Addendum I to Annex A.

Section 3.2: Possessory Bilateral Collateral:Collateral Description

None.

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Section 4: Exceptions to Representations and Warranties in Contribution Agreement:

<u>Section</u>	<u>Exception</u>
4.01(g): Commitments	None
4.01(k): Contributor as Lender	N/A
4.01(l): Contributor not "insider"	N/A
4.01(n): No notice of voidable payments	N/A
4.01(u): No preference payments	N/A
4.01(y): Bilateral Loan Cash Purchase Price	
4.01(ee): Bilateral ABL Borrowing Base Certificate as to which no subsequent field audit conducted	N/A

Section 8.3: Pre- Agreement Date Accruals:

<u>Item</u>	<u>Amount</u>
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HK MEDICAL TECHNOLOGIES

Section 1: Information Relating to Definitions in Contribution Agreement:

"Borrower"	means Herring International, Inc., a Texas corporation
"Credit Agreement"	means that certain Amended and Restated Loan Agreement dated as of August 15, 2000, by the Borrower and Bank of America, N.A.
"Loan"	Term loan in an outstanding principal amount as of the Trade Date of: see Addendum I to Annex A.
"Bankruptcy Case"	N/A.
"Bankruptcy Court"	N/A.
"Bankruptcy Orders"	N/A.
"Bar Date"	N/A.
"Bilateral ABL"	No.
"Bilateral Loan"	Yes.
"Collateral Type"	<u>Collateral Description</u> Due diligence is incomplete as to the Business Assets of HK Medical, including as a result of UCC lien searches conducted against HK Medical as set forth in the UCC Search Chart, which search results show that no UCC-1 financing statements in favor of BANA are on file in such jurisdictions.
"Commitment"	Total commitment amount as of the Trade Date: see Addendum I to Annex A.
"Equity Interests"	None.
"Participated Loan"	No.
"Proof of Claim"	N/A.
"Required Consents"	None.
"Settled Without Accrued Interest"	No.
"Transfer Fee"	None.
"Unfunded Commitment"	Aggregate portion of Commitment available for draw by the Borrower as of the Trade Date: see Addendum I to Annex A.

Section 3.2: Possessory Bilateral Collateral:Collateral Description

None.

Section 4: Exceptions to Representations and Warranties in Contribution Agreement:

<u>Section</u>	<u>Exception</u>
4.01(k): Contributor as Lender	N/A
4.01(l): Contributor not "insider"	N/A
4.01(g): Commitments	None
4.01(n): No notice of voidable payments	N/A
4.01(u): No preference payments	N/A
4.01(y): Bilateral Loan Cash Purchase Price	
4.01(cc): Bilateral ABL Borrowing Base Certificate as to which no subsequent field audit conducted	N/A

Section 8.3: Pre- Agreement Date Accruals:

Item

Amount

HK MEDICAL TECHNOLOGIES

Section 1: Information Relating to Definitions in Contribution Agreement:

"Borrower"	means Tim and Adrianna Herring.
"Credit Agreement"	means that certain Construction Loan Agreement dated as of March 19, 1997 between the Borrower and Bank of America, N.A.
"Loan"	Term loan in an outstanding principal amount as of the Trade Date of: see Addendum I to Annex A.
"Bankruptcy Case"	N/A.
"Bankruptcy Court"	N/A.
"Bankruptcy Orders"	N/A.
"Bar Date"	N/A.
"Bilateral ABL"	No.
"Bilateral Loan"	Yes.
"Collateral Type"	<u>Collateral Description</u> Incomplete as to Real Estate.
"Commitment"	Total commitment amount as of the Trade Date: see Addendum I to Annex A.
"Equity Interests"	None.
"Participated Loan"	No.
"Proof of Claim"	N/A.
"Required Consents"	None.
"Settled Without Accrued Interest"	No.
"Transfer Fee"	None.
"Unfunded Commitment"	Aggregate portion of Commitment available for draw by the Borrower as of the Trade Date: see Addendum I to Annex A.

Section 3.2: Possessory Bilateral Collateral:Collateral Description

N/A

Section 4: Exceptions to Representations and Warranties in Contribution Agreement:

<u>Section</u>	<u>Exception</u>
4.01(g): Commitments	None
4.01(k): Contributor as Lender	N/A
4.01(l): Contributor not "insider"	N/A
4.01(n): No notice of voidable payments	N/A
4.01(u): No preference payments	N/A
4.01(y): Bilateral Loan Cash Purchase Price	
4.01(ee): Bilateral ABL Borrowing Base Certificate as to which no subsequent field audit conducted	N/A

Section 8.3: Pre- Agreement Date Accruals:

Item

Amount

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Exhibit A

Revised
ADDENDUM I to
Schedules to Annex A

<u>Loan Number</u>	<u>Relationship Name</u>	<u>10/22/01 Funded Balance</u>	<u>10/22/01 Unfunded Balance (1)</u>	<u>10/22/01 Commitment</u>
013-01	HK Medical Tech	1,000,000		1,000,000
013-02	HK Medical Tech	5,000,000		5,000,000
013-03	HK Medical Tech	234,575		234,575
013-04	HK Medical Tech	659,092		659,092
013-05	HK Medical Tech	326,723		326,723
013-06	HK Medical Tech	230,690		230,690
013-07	HK Medical Tech	615,990		615,990
		<u>8,067,069</u>		<u>8,067,069</u>

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