

FORM 10-K

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

For the fiscal year ended December 31, 2004.

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

Commission File No. 1-8129.

**US 1 INDUSTRIES, INC.**

(Exact name of registrant as specified in its charter)

Indiana 95-3585609  
(State of Incorporation) (I.R.S. Employer Identification No.)

1000 Colfax, Gary, Indiana 46406  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (219) 977-5225

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

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Common Stock, no par value	None

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act).

Yes  No

On March 2, 2005, there were 11,618,224 shares of registrant's common stock outstanding.

On June 30, 2004, there were 11,618,224 shares of registrant's common stock outstanding, and the aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$7,146,126. For purposes of the forgoing statement, directors, officers and greater than 5% shareholders of the registrant have been assumed to be affiliates.

## TABLE OF CONTENTS

### **PART I**

Item 1.	Description of Business	1
Item 2.	Properties	5
Item 3.	Legal Proceedings	6
Item 4.	Submission of Matters to a Vote of Security Holders	6

### **PART II**

Item 5.	Market for Common Equity and Related Stockholder Matters	6
Item 6.	Selected Financial Data	7
Item 7.	Management's Discussion and Analysis	8
Item 7a.	Quantitative and Qualitative Disclosures about Market Risk	17
Item 8	Financial Statements	18
Item 9	Changes in and Disagreements with Accountant's on Accounting and Financial Disclosure	34
Item 9a.	Controls and Procedures	35

### **PART III**

Item 10	Directors and Executive Officers of the Registrant	36
Item 11	Executive Compensation	38
Item 12	Security Ownership of Certain Beneficial Owners and Management	39
Item 13	Certain Relationships and Related Transactions	40
Item 14	Principal Accounting Fees and Services	42

### **PART IV**

Item 15	Exhibits and Financial Statement Schedules	43
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### **SIGNATURES**

## PART 1

### Item 1. Business.

The registrant, US 1 Industries, Inc. is a holding company that owns subsidiary operating companies most, of which are interstate trucking companies operating in all 48 states. For descriptive purposes herein the registrant, US 1 Industries, Inc may hereinafter be referred to, together with its subsidiaries, as "US 1" or the "Company". The Company's business consists principally of truckload operations, for which the Company obtains a significant percentage of its business through independent agents, who then arrange with independent truckers to haul the freight to the desired destination.

US 1 was incorporated in California under the name Transcon Incorporated on March 3, 1981. In March 1994, the Company changed its name to US 1 Industries, Inc. In February 1995, the Company was merged with an Indiana corporation for purposes of re-incorporation under the laws of the state of Indiana. The Company's principal subsidiaries consist of Antler Transport, Inc., Blue and Grey Transport, Inc., Blue and Grey Brokerage, Inc., Carolina National Logistics, Inc., Carolina National Transportation, Inc., Friendly Transport, Inc., Five Star Transport, Inc., Keystone Logistics, Inc., Unity Logistics Inc., Gulf Line Brokerage, Inc., Gulf Line Transportation, Inc., Keystone Lines, Inc., Cam Transport, Inc., Transport Leasing, Inc., Harbor Bridge Intermodal, Inc., Patriot Logistics, Inc. (f/k/a Keystone Intermodal Services, Inc.), and TC Services, Inc. Most of these subsidiaries operate under authority granted by the United States Department of Transportation (the "DOT") and various state agencies. The Company's operating subsidiaries generally maintain separate offices, have their own management teams, officers and directors, and are run independently of the parent and each other.

### Operations

The Company, through its subsidiaries, carries virtually all forms of freight transported by truck, including specialized trucking services such as containerized, refrigerated, and flatbed transportation.

The Company, through its subsidiaries, is primarily a non-asset based business, contracting with independent truckers who generally own the trucks they drive and independent agents who own the terminals from which they operate. The Company pays the independent truckers and agents a percentage of the revenue received from customers for the transportation of goods. The expenses related to the operation of the trucks are the responsibility of the independent contractors and the expenses related to the operation of the terminals are the responsibility of the agents. Certain operations of the Company also subcontract ("broker") freight loads to other unaffiliated transportation companies. Consequently, short-term fluctuations in operating activity have less of an impact on the Company's net income than they have on the net income of truck transportation companies that bear substantially all of the fixed cost associated with the ownership of the trucks. Like other truck transportation companies, however, US 1 Industries' revenues are affected by competition and the state of the economy.

During 2001, the Company began Keystone Intermodal, which utilizes employees to staff the terminals rather than independent sales agents. During 2002 the Company began Transport Leasing Georgia, which also utilizes employees rather than independent agents. In 2003, the operation formally known as Keystone Intermodal was renamed Patriot Logistics, Inc. These operations accounted for

approximately 29% and 23% of the Company's consolidated revenues in 2004 and 2003, respectively. Marketing and Customers

The Company, through its subsidiaries, conducts the majority of its business through a network of independent agents who are in regular contact with shippers at the local level. The agents have facilities and personnel to monitor and coordinate shipments and respond to shippers' needs in a timely manner.

These agents are typically paid a commission of 6% to 10% of the Company's revenues from the agents' trucking operations.

During 2004, the Company utilized the services of approximately 98 agents. One agent accounted for 10.3%, 11.3%, and 6.9% of the Company's revenue for the years ended December 31, 2004, 2003, and 2002, respectively. Otherwise, no other agent accounted for more than 10% of revenue during any of these years. The Company shipped freight for approximately 1,000 customers in 2004, none of which accounted for more than 10% of the Company's revenues.

### **Independent Contractors**

The independent contractors (persons who own the trucks) used by the Company must enter into standard equipment operating agreements. The agreements provide that independent contractors must bear many of the costs of operations, including drivers' compensation, maintenance costs, fuel costs, collision insurance, taxes related to the ownership and operation of the vehicle, licenses, and permits. These independent contractors are paid 65% to 78% of the charges billed to the customer. The Company requires independent contractors to maintain their equipment to standards established by the U.S. Department of Transportation (DOT), and the drivers are subject to qualification and training procedures established by the DOT. The Company is also required to have random drug testing, enforce hours of service requirements, and monitor maintenance of vehicles.

### **Employees**

At December 31, 2004, the Company, through its subsidiaries, had approximately 78 full-time employees. The Company's employees are not covered by a collective bargaining agreement.

### **Competition**

The trucking industry is highly competitive. The Company competes for customers primarily with other nationwide carriers, some of which have company-owned equipment and company drivers, and many of which have greater volume and financial resources. The Company also competes with private carriage conducted by existing and potential customers. In addition, the Company competes with other modes of transportation including rail.

The Company also faces competition for the services of independent trucking contractors and agents. Agents routinely do business with a number of carriers on an ongoing basis. The Company has attempted to develop a strong sales agent network by maintaining a policy of prompt payment for services rendered and providing advanced computer systems.

Competition is based on several factors such as cost, timely availability of equipment, and quality of service.

## **Insurance**

The US 1 subsidiary trucking companies purchase liability insurance coverage of up to \$1 million per occurrence with a \$5,000 deductible for the operation of the trucks. They also buy cargo insurance coverage of up to \$1,000,000 per occurrence with up to a \$50,000 deductible. The companies also purchase a commercial general liability policy with a limit of \$2,000,000 combined single limit and no deductible. The current insurance market is volatile with significant rate changes that could adversely affect the cost and availability of coverage. In addition, the insurance coverage that the companies purchase may, given the recent trend toward exorbitant jury verdicts, not be sufficient to cover losses experienced by the companies, as was the case with a recent verdict against Cam Transport, Inc. See "Item 3. Legal Proceedings."

One of the Company's insurance providers, American Inter-Fidelity Exchange (AIFE), is managed by a director of the Company. The Company has an investment of \$126,461 in AIFE. AIFE provides auto liability and cargo insurance to several subsidiaries of the Company as well as other entities, some of which are related to the Company by common ownership. For the years ended December 31, 2004, 2003 and 2002, cash paid to AIFE for insurance premiums and deductibles was approximately \$5,673,000, \$5,373,000, and \$3,923,000, respectively.

The Company exercises no control over the operations of AIFE. As a result, the Company recorded its investment in AIFE under the cost method of accounting for each of the three years ending December 31, 2002, 2003, and 2004. Under the cost method, the investment in AIFE is reflected at its original amount and income is recognized only to the extent of dividends paid by AIFE. There were no dividends declared by AIFE for the years ended December 31, 2004, 2003 and 2002.

If AIFE incurs a net loss, the loss may be allocated to the various policyholders based on each policyholder's premium as a percentage of the total premiums of AIFE for the related period. There has been no such loss assessment for each of the three years ending December 31, 2002, 2003, and 2004. For fiscal 2004, the Company accounted for approximately 85% of the total premium revenue of AIFE. At December 31, 2003, AIFE had net worth of approximately \$5.6 million, a portion of which is attributable to other policyholders of AIFE.

In addition, the Chief Executive Officer and Chief Financial Officer, as well as another director of the Company, are the sole shareholders of American Inter-Fidelity Corporation (AIFC), which serves as the attorney in fact of AIFE. AIFC is entitled to receive a management fee from AIFE. AIFE paid management fees of \$277,000 and \$282,000 to AIFC during 2004 and 2003, respectively, which AIFC then paid as dividends to these officers and directors of the Company.

## **Independent Contractor Status**

From time to time, various legislative or regulatory proposals are introduced at the federal or state levels to change the status of independent contractors' classification to employees for either employment tax purposes (withholding, social security, Medicare and unemployment taxes) or other

benefit purposes. Currently, most individuals are classified as employees or independent contractors for employment tax purposes based on 20 "common-law" factors rather than any definition found in the Internal Revenue Code or Internal Revenue Service regulations. In addition, under Section 530 of the Revenue Act of 1978, taxpayers that meet certain criteria may treat similarly situated workers as employees, if they have received a ruling from the **Independent Contractor Status (continued)**

Internal Revenue Service or a court decision affirming their treatment, or if they are following a long-standing recognized practice.

Although management is unaware of any proposals currently pending to change the employee/independent contractor classification, the costs associated with potential changes, if any, in the employee/independent contractor classification could adversely affect the Company's results of operations if the Company were unable to reflect them in its fee arrangements with the independent contractors and agents or in the prices charged to its customers.

### **Regulation**

The Company, through its subsidiaries is a common and contract motor carrier regulated by the DOT and various state agencies. Management does not believe that regulation by the DOT or by the states will have a material effect on the Company's operations. The Company's independent contractor drivers also must comply with the safety and fitness regulations promulgated by the DOT, including those relating to drug and alcohol testing and hours of service.

The Company and its subsidiaries are subject to various federal, state, and local environmental laws and regulations, implemented principally by the Environmental Protection Agency (EPA) and similar state regulatory agencies, governing the management of hazardous wastes, other discharge of pollutants into the air and surface and underground waters, and the disposal of certain substances. Management believes that its operations are in compliance with current laws and regulations and does not know of any existing condition (except as noted in the Environmental Regulation section below) that would cause compliance with applicable environmental regulations to have a material effect on the Company's earnings or competitive position.

### **Environmental Regulation**

The Company's subsidiary, TC Services, Inc. owns property in Phoenix, Arizona that was formerly leased to Transcon Lines as a terminal facility, where soil contamination problems existed or are known to exist currently. State environmental authorities notified the Company of potential soil contamination from underground storage tanks, and management has been working with the regulatory authorities to implement the required remediation. The underground storage tanks were removed from the Phoenix facility in February 1994. Currently the Arizona environmental authorities are requiring further testing of the property. The Company believes it is in substantial compliance with state and federal environmental regulations relative to the trucking business. However, the Company is working with regulatory officials to eliminate any sources of contamination and determine the extent of existing problems. Estimates of the costs to complete the future remediation of approximately \$141,000 are considered in the land valuation allowance in the Company's consolidated financial statements at December 31, 2004 and 2003.

### **Safe Harbor Provisions of the Private Securities Litigation Reform Act of 1995**

The statements contained in Item 1 (Description of Business) and Item 7 (Management Discussion and Analysis of Financial Condition and Results of Operation), particularly the statements under "Future Prospects", contain forward-looking statements that are subject to a variety of risks and uncertainties. The Company cautions readers that these risks and uncertainties could cause the Company's actual results in 2005 and beyond to differ materially from those suggested by any forward-looking statements.

**Safe Harbor Provisions of the Private Securities Litigation Reform Act of 1995 (continued)**

These risks and uncertainties include, without limitation, a lack of historic information for new operations on which expectations regarding their future performance can be based, general economic and business conditions affecting the trucking industry, competition from, among others, national and regional trucking companies that have greater financial and marketing resources than the Company, claims relating to accidents and cargo theft, the availability of sufficient capital, and the Company's ability to successfully attract and retain qualified owner operators and agents.

## Item 2. Properties

The Company's administrative offices are at 1000 Colfax, Gary, Indiana. The Company leases its administrative offices of approximately 5,000 square feet on a month-to-month basis for \$3,000 per month. Patriot Logistics, Inc. leases office space in Fort Smith, AK of approximately 13,250 square feet on a month-to-month basis for \$3,216. Both Companies lease their space from Mr. Michael E. Kibler, President, Chief Executive Officer and a director of the Company, and Mr. Harold Antonson, Treasurer, Chief Financial Officer and a director of the Company.

In addition, the Company's subsidiaries lease office space and land in several locations throughout the United States, as summarized below:

<u>Subsidiary</u>	<u>City, State</u>	<u>Approximate Square Feet</u>	<u>Monthly Rent</u>	<u>Lease Expiration</u>
Carolina National Transportation, Inc.	Mt. Pleasant, SC	6,280	\$ 9,229	June 30, 2011
Keystone Logistics, Inc.	South bend, IN	4,015	2,987	month to month
CAM Transport, Inc.	Gulfport, MS	3,000	1,600	month to month
Patriot Logistics, Inc	Atlanta, GA	57,420	1,997	Aug. 31, 2005
Patriot Logistics, Inc	Houston, TX	33,000	9,000	Dec. 31, 2005
Patriot Logistics, Inc.	Laredo, TX	1,520	1,250	Sept 30, 2005
Patriot Logistics, Inc.	Jacksonville, FL	1,500	5,664	Sept 30, 2007
Patriot Logistics, Inc.	Lathrop, CA	1,000	1,200	month to month
Patriot Logistics, Inc.	Lynwood, CA	18,704	8,416	July 7, 2007
Patriot Logistics, Inc.	Milpitas, CA	1,278	2,275	June 30, 2005
Patriot Logistics, Inc.	Houston, TX	4,050	2,005	Dec. 14, 2007
Transport Leasing, Inc.	Ft. Smith, AK	1,000	350	month to month
Transport Leasing, Inc.	Calhoun, GA	8.4 acres	7,500	July 14, 2007
Patriot Logistics, Inc	Kansas City, MO	432	1,500	March 1, 2005
Patriot Logistics, Inc	Charlotte, NC	500	2,500	May 31, 2005
Patriot Logistics, Inc	Irving, TX	1,196	1,196	month to month
Patriot Logistics, Inc.	Ontario, CA	4,000	5,200	April 16, 2006
Patriot Logistics, Inc.	Ft. Smith, AK	13,250	3,216	month to month
Patriot Logistics, Inc.	Dallas, TX	5.0 acres	4,000	Aug 1, 2006

Management believes that the Company's leased properties are adequate for its current needs and can be retained or replaced at acceptable cost.

**Item 3. Legal Proceedings**

On March 16, 2005, a jury entered a verdict against a subsidiary of the Company, Cam Transport, Inc. ("CAM") in the amount of \$1.7 million in a personal injury case relating to an auto accident which occurred on March 22, 2001 entitled Lina Bennett vs Toby M. Ridgeway and Cam Transport, Inc. in the Court of Common Pleas of Allendale County, South Carolina. As a result, the Company recorded a charge of \$1.7 million related to this litigation for the year-ended December 31, 2004. This amount is included in accrued legal settlements at December 31, 2004.

CAM maintains auto liability insurance up to a maximum of \$1 million per occurrence for litigation related to such accidents. However, CAM's insurer, American Inter-fidelity Exchange, has filed a declaratory judgment action asserting that it is not obligated to provide insurance coverage on this matter. As a result of the uncertainty regarding the insurance coverage for this claim, the expense recorded for this litigation has not been reduced by any expected amounts to be recovered from the insurance company and there is no receivable established at December 31, 2004 for the amount which could possibly be covered under the auto liability policy. As a result, Cam Transport, Inc. does not have sufficient net worth or assets to satisfy the verdict, and substantially all of Cam Transport, Inc.'s assets are pledged to its lender.

The Company and its subsidiaries are involved in other litigation in the normal course of its business. Management intends to vigorously defend these cases. In the opinion of management, the other litigation now pending will not have a material adverse affect on the consolidated financial statements of the Company.

**Item 4. Submission of Matters to a Vote of Security Holders.**

No Matters were submitted to a vote of Security Holders during the fourth quarter of 2004.

**Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.**

Shares of Common Stock of the Company are listed and traded on the NASD Electronic "bulletin board market" under the symbol "US00.OB".

The following table sets forth for the period indicating the high and low bid prices per share of the Common Stock as reported from quotations provided by North American Quotations and reflect inter-dealer prices, without retail mark-up, mark-down, or commission and may not represent actual transactions.

<b>Calendar Year</b>	<b>High</b>	<b>Low</b>
<u>2004</u>		
First Quarter	1.25	.81
Second Quarter	1.23	.71
Third Quarter	.84	.47
Fourth Quarter	1.07	.59

<u>2003</u>		
First Quarter	.60	.42
Second Quarter	1.15	.36
Third Quarter	1.45	.79
Fourth Quarter	2.85	.93

As of March 2, 2005, there were approximately 3,104 holders of record of Common Stock.

The Company has not paid and, for the foreseeable future, does not anticipate paying any cash dividends on its Common Stock. The Company's current credit agreement prohibits the payment of dividends.

#### Item 6. Selected Financial Data

The selected consolidated financial data presented below have been derived from the Company's consolidated financial statements. The consolidated financial statements for the years ended December 31, 2004, 2003 and 2002 have been audited by the Company's registered independent certified public accountants, whose report on such consolidated financial statements is included herein under Item 8. The information set forth below should be read in conjunction with the consolidated financial statements and notes thereto under Item 8 and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

(in thousands, except shares and per share data)

	Fiscal Year Ended December 31,				
	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
STATEMENT OF OPERATIONS DATA:					
Operating revenues	\$143,313	\$121,747	\$104,186	\$72,068	\$48,284
Purchased transportation	105,538	89,699	77,071	55,609	37,627
Commissions	14,294	12,348	10,278	6,597	4,344
Other operating costs and expenses	23,425	17,977	14,435	8,051	4,498
Operating income	56	1,723	2,402	1,811	1,325
Interest expense	466	493	550	712	623
Minority interest expense	28	155	118	0	0
Income before income taxes	101	1,393	1,684	1,168	802
Income tax (expense) benefit	(86)	0	0	400	800
Net income	15	1,393	1,684	1,568	1,602
Net Income available to common shares	15	1,393	2,237	1,465	1,509
Income per common share					
Net Income					
Basic	\$0.00	\$0.12	\$0.20	\$0.14	\$0.14
Diluted	\$0.00	\$0.11	\$0.20	\$0.14	\$0.14
Weighted average shares outstanding:					
Basic	11,618,224	11,618,224	11,075,758	10,618,224	10,618,224
Diluted	11,964,174	11,852,507	11,075,758	10,618,224	10,618,224
BALANCE SHEET DATA:					
Total assets	26,120	22,077	21,444	11,891	11,891
Long-term debt, including					
current portion	2,890	3,371	4,311	4,660	4,259
Working capital	5,145	4,888	2,966	2,039	1,720
Shareholders' equity (deficiency)	3,593	3,410	1,857	( 995)	(2,459)

(in thousands)

	Fiscal Year Ended December 31,				
	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
OTHER DATA:					
Cash (used in) provided by operating activities	(271)	2,419	831	(1,364)	(2,656)
Cash provided by (used in) investing activities	274	(128)	(157)	(1,210)	(84)
Cash provided by (used in) financing activities	(3)	(2,291)	(996)	2,895	2,740

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation.

### Overview

Purchased transportation represents the amount an independent contractor is paid to haul freight and is primarily based on a contractually agreed-upon percentage of revenue generated by the haul for truck capacity provided by independent contractors. Purchased transportation is the largest component of operating expenses and increases or decreases in proportion to the revenue generated through independent contractors. Commissions to agents and brokers are similarly based on contractually agreed-upon percentages of revenue.

A majority of the insurance expense is based on a percentage of revenue and, as a result, will increase or decrease, on a consolidated basis with the Company's revenue. Potential liability associated with accidents in the trucking industry is severe and occurrences are unpredictable. A material increase in the frequency or severity of accidents or the unfavorable development of existing claims could adversely affect the company's operating income. One of the Company's subsidiaries recently had a substantial verdict entered against it. See "Item 3. Legal Proceeding".

Historically salaries, wages, fringe benefits, and other operating expenses had been principally non-variable expenses and remained relatively fixed with slight changes in relationship to revenue. However, during 2002, the Company added certain operations, which utilize employees rather than independent agents, which distorts direct comparisons somewhat.

The following table set forth the percentage relationships of expense items to revenue for the periods indicated:

	Fiscal Years		
	<u>2004</u>	<u>2003</u>	<u>2002</u>
Revenue	100.0%	100.0%	100.0%
Operating expenses:			
Purchased transportation	73.6	73.7	74.0
Commissions	10.0	10.1	9.9
Insurance and claims	4.2	4.4	4.2
Litigation judgment	1.2	0.0	0.0
Salaries, wages and fringe benefits	6.3	5.6	4.9
Other operating expenses	<u>4.6</u>	<u>4.8</u>	<u>4.8</u>
Total operating expenses	<u>99.9</u>	<u>98.6</u>	<u>97.8</u>
Operating income	0.1	1.4	2.2

### Critical Accounting Policies and Estimates

Our financial statements reflect the selection and application of accounting policies, which require management to make significant estimates and assumptions. We believe that the following are some of the more critical judgment areas in the application of our accounting policies that currently affect our financial condition and results of operations.

Preparation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions affecting the reported amounts of assets, liabilities, revenues, and expenses and related contingent liabilities. On an on-going basis, the Company evaluates its estimates, including those related to revenues, bad debts, income taxes, contingencies, and litigation. The Company bases its estimates on historical experience and **Critical Accounting Policies and Estimates (continued)**

on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

We record an allowance for doubtful accounts based on (1) specifically identified amounts that we believe to be un-collectable and (2) an additional allowance based on certain percentages of our aged receivables, which are determined based on historical experience and (3) our assessment of the general financial conditions affecting our customer base. At December 31, 2004, the allowance for doubtful accounts was \$1,023,000 or approximately 4% of total trade accounts receivable. If actual collections experience changes, revisions to our allowance may be required. After reasonable attempts to collect a receivable have failed, the receivable is written off against the allowance. In addition, we review the components of other receivables, consisting primarily of advances to drivers and agents, and write off specifically identified amounts that we believe to be un-collectable.

Revenue for freight is recognized upon delivery. Amounts payable for purchased transportation, commissions and insurance are accrued when incurred. We are involved in various litigation matters in the normal course of business. Management evaluates the likelihood of a potential loss from the various litigation matters on a quarterly basis. When it is probable that a loss will occur from litigation and the amount of the loss can be reasonably estimated, the loss is recognized in the Company's financial statements. If a potential loss is not determined to be both probable and reasonably estimated, but there is at least a reasonable possibility that a loss may be incurred, the litigation is not recorded in the Company's financial statements but this litigation is disclosed in the footnotes of the financial statements.

The Company's subsidiaries carry insurance for auto liability, property damage, and cargo loss and damage through various programs. A significant portion of the Company's liability insurance is obtained from American Inter-Fidelity Exchange ("AIFE"), a related party. The Company's insurance liabilities are based upon the best information currently available and are subject to revision in future periods as additional information becomes available. Management believes it has adequately provided for insurance claims.

AIFE is managed by a director of the Company. The Company has an investment of \$126,461 in AIFE. AIFE provides auto liability, property damage, and cargo loss and damage insurance coverage to several subsidiaries of the Company as well as other entities related to the Company by common ownership. For the years ended December 31, 2004, 2003 and 2002, cash paid to AIFE for

insurance premiums and deductibles were approximately \$5,673,000, \$5,373,000, and \$3,923,000, respectively.

The Company exercises no control over the operations of AIFE. As a result, the Company recorded its investment in AIFE under the cost method of accounting for each of the three years in the period ended December 31, 2004. Under the cost method, the investment in AIFE is reflected at its original amount and income is recognized only to the extent of dividends paid by AIFE. There were no dividends declared by AIFE for the years ended December 31, 2004, 2003 and 2002.

If AIFE incurs a net loss, the loss may be allocated to the various policyholders based on each policyholder's premium as a percentage of the total premiums of AIFE for the related period. There has been no such loss assessment for each of the three years ending December 31, 2002, 2003, and **Critical Accounting Policies and Estimates (continued)**

2004. The Subsidiaries of the Company currently account for the majority of the premiums of AIFE. For fiscal 2004, the Company accounted for approximately 85% of the total premium revenue of AIFE. At December 31, 2003, AIFE had net worth of approximately \$5.6 million, a portion of which is attributable to other policyholders of AIFE.

Deferred income taxes are recognized for the tax consequences of "temporary differences" by applying enacted statutory tax rates applicable to future years to differences between the financial statement carrying amounts and the tax basis of existing assets and liabilities. At December 31, 2004, the Company's deferred tax asset of approximately \$20.4 million consists principally of net operating loss carry-forwards. The Company's deferred tax asset has been reduced by a valuation allowance to the extent such benefits are not expected to be fully utilized. The Company has based its estimate of the future utilization of the net operating loss upon its estimate of future taxable income as well as the timing of expiration of the Company's net operating loss carry-forwards. Approximately 86% of the Company's net operating loss carry-forwards will expire in 2005 and 2006, with substantially all of the net operating loss carry-forwards expiring by 2010. At December 31, 2004, the valuation allowance for deferred tax assets was approximately \$19.2 million. If actual future taxable income differs, revisions to the valuation allowance and net deferred tax asset may be required.

#### **2004 Compared to 2003**

Revenue for the 2004 fiscal year was \$143.3 million, an increase of \$21.6 million, or 17.7%, over revenue for the 2003 fiscal year. The increase was attributable to the continued growth of Patriot Logistics, Inc. (f/k/a Keystone Intermodal, Inc.) and Keystone Logistics, Inc. The growth of these subsidiaries is primarily attributable to the addition of new terminals and/or independent agents and independent truckers.

Purchased transportation and commission expense generally increase or decrease in proportion to the revenue generated through independent contractors. Many agents negotiate a combined percentage payable for purchased transportation and commission. The mix between the amounts of purchased transportation paid versus commissions paid may vary slightly based on agent negotiations with independent owner operators. However, in total, commissions and purchased transportation would typically be expected to remain relatively consistent as a percentage of revenue. Purchased transportation and commissions in total averaged 83.6% of revenue in fiscal 2004 versus 83.8% of revenue in fiscal 2003.

In late 2001, the Company began a subsidiary motor carrier, Patriot Logistics, Inc. that utilized employees rather than independent agents to monitor and coordinate shipments. The Company added a similar operation in 2002 and these operations continue to grow. Operations using employees rather than independent agents to coordinate shipments were 29% and 23% of consolidated revenue in fiscal 2004 and 2003, respectively. With the continued growth of such operations, a decrease in the average percentage of total commissions and purchased transportation to revenues would be expected, along with an increase in salaries. However, the Company's subsidiaries also continued to add new operations utilizing independent agents, some negotiated with higher purchased transportation and commission percentages, which has offset the expected decrease in the total of purchased transportation and commission as a percentage of revenue.

#### **2004 Compared to 2003 (continued)**

Insurance and claims decreased in 2004 to 4.2% of revenue compared to 4.4% of revenue for 2003. A majority of the Company's insurance expense is based on a percentage of revenue and, as a result, will increase or decrease on a consolidated basis with the Company's revenue. Potential liability associated with accidents in the trucking industry is severe and occurrences are unpredictable. A material increase in the frequency or severity of accidents or the unfavorable development of existing claims could adversely affect the Company's operating income. The decrease of 0.2% of revenue can be attributed to the decrease of certain operations' claim activity for the year ended December 31, 2004 in comparison to that of the same period for 2003. The Company obtains a significant amount of its auto liability and cargo insurance from AIFE, an affiliated entity (see Note 5 to consolidated financial statements).

Litigation judgment increased \$1.7 million in 2004. This increase is the result of a verdict entered on March 16, 2005 against a subsidiary of the Company, Cam Transport, Inc., in the amount of \$1.7 million for a personal injury case relating to an auto accident which occurred in March 2001. This case is discussed in detail under Item 3.

Salaries, wages and fringe benefits were 6.2% of revenue in 2004 and 5.6% in 2003. This increase of 0.6% can primarily be attributed to the addition of personnel hired to accommodate the growth of expanding terminals that have not yet begun to or did not produce at their full revenue potential.

Other operating expenses decreased slightly as a percentage of revenue to 4.7% in 2004 from 4.8% in 2003. While not all operating expenses are directly variable with revenues, the increased revenue directly impacts several components of operating expenses such as bad debt expense. In addition, the Company's subsidiaries have expanded by adding new terminals and operations resulting in the addition of new locations resulting in an increase in operating expenses such as rent. Operating expenses increased \$0.8 million from \$5.9 million in 2003 to \$6.7 million in 2004. The increase is primarily attributable to (1) a \$0.73 million increase in operating expense due specifically to the growth of two significant operations, (2) \$0.16 million increase in rent expense due to the expansion of locations, (3) \$0.06 million increase in bad debt expense, and (4) overall increase in operating expenses at other locations as volume continued to grow during 2004.

Based on the changes in revenue and expenses discussed above, operating income decreased by \$1,667,034 from \$1,723,381 in 2003 to \$56,347 in 2004.

Interest expense decreased slightly to \$0.47 million in 2004 from \$0.49 million in 2003. This decrease in interest expense is primarily attributable to a decrease in the funds the Company borrowed against its line of credit during 2004. The rate on the Company's revolving line of credit is currently based on certain financial covenants and may range from prime to prime less .50%. At December 31, 2004 the Company's interest rate on the loan with its lender was at prime (5.25%).

Other income includes income from rental property, storage fees, and gain on the sale of fixed assets. Other income increased \$.22 million in 2004 from 2003. This increase is due primarily to the gain on the sale of equipment.

The Company also recognized minority interest expense of \$27,748 and \$154,529 relating to the minority shareholders' portion of its subsidiary, Carolina National Transportation, Inc., net income for the years ended December 31, 2004 and 2003, respectively. Carolina National Transportation, Inc., is a 60% owned subsidiary of the Company.

#### **2004 Compared to 2003 (continued)**

The Company has net operating loss carry-forwards of approximately \$50 million at December 31, 2004. These carry-forwards are available to offset taxable income in future years and substantially all of these carry-forwards will expire in the years 2005 through 2010. Approximately 86% of the Company's net operating loss carry-forwards will expire in 2005 & 2006. At December 31, 2004, the Company has realized a net deferred tax asset of \$1,200,000. Based on anticipated future taxable income and anticipated future usage of the net operating loss, the Company believes it is more likely than not that the net deferred tax asset will be realized. Due to the uncertainty of the remaining tax asset, a valuation allowance has been maintained for the remaining deferred tax asset at December 31, 2004.

As a result of the factors outlined above, net income in 2004 was \$14,522 compared with \$1,392,986 in 2003.

#### **2003 Compared to 2002**

Revenue for the 2003 fiscal year was \$121.7 million, an increase of \$17.6 million, or 16.9%, over revenue for the 2002 fiscal year. The increase was attributable to the continued growth of Patriot Logistics, Inc. (f/k/a Keystone Intermodal, Inc.), Keystone Lines, Inc., and Harbor Bridge Transportation. The growth of these subsidiaries is primarily attributable to the addition of new terminals and/or independent agents and independent truckers.

Purchased transportation and commission expense generally increase or decrease in proportion to the revenue generated through independent contractors. Many agents negotiate a combined percentage payable for purchased transportation and commission. The mix between the amounts of purchased transportation paid versus commissions paid may vary slightly based on agent negotiations with independent owner operators. However, in total, commissions and purchased transportation would typically be expected to remain relatively consistent as a percentage of revenue. Purchased transportation and commissions in total averaged 83.8% of revenue in fiscal 2003 verses 83.9% of revenue in fiscal 2002.

In late 2001, the Company began a subsidiary motor carrier, Patriot Logistics, Inc. that utilized employees rather than independent agents to monitor and coordinate shipments. The Company added a similar operation in 2002 and these operations continue to grow. Operations using employees rather than independent agents to coordinate shipments were 23% and 15% of

consolidated revenue in fiscal 2003 and 2002, respectively. With the continued growth of such operations, a decrease in the average percentage of total commissions and purchased transportation to revenues would be expected. However, the subsidiaries continued to add new operations utilizing independent agents, some negotiated with higher purchased transportation and commission percentages, which has offset the expected decrease in the total of purchased transportation and commission as a percentage of revenue.

Insurance and claims increased in 2003 to 4.4% of revenue compared to 4.2% of revenue for 2002. A majority of the subsidiaries insurance expense is based on a percentage of revenue and, as a result, will increase or decrease on a consolidated basis with the Company's revenue. Potential liability associated with accidents in the trucking industry is severe and occurrences are unpredictable. A material increase in the frequency or severity of accidents or the unfavorable development of existing claims could adversely affect the Company's operating income. The increase of 0.2% of revenue can be attributed to the increase of certain operations' liability and cargo insurance rates due to adverse loss experience and the continued increase of

**2003 Compared to 2002 (continued)**

insurance rates in today's economy. The subsidiaries obtain a significant amount of their auto liability and cargo insurance from AIFE, an affiliated entity (see Note 5 to consolidated financial statements).

Salaries, wages and fringe benefits were 5.6% of revenue in 2003 and 4.9% in 2002. This increase of 0.7% can be attributed to (1) the growth of divisions that utilize employees who are paid a salary instead of agents who would be paid commissions, (2) hiring of other sales and management personnel, such as agent recruiters whose work did not benefit the Company sufficiently to offset the cost of their compensation during 2003 and (3) an increase in compensation of the executive officers of the Company.

Other operating expenses remained consistent at 4.8% of revenue in both 2003 and 2002. While not all operating expenses are directly variable with revenues, the increased revenue directly impacts several components of operating expenses such as bad debt expense. In addition, the Company has expanded by adding new terminals and operations resulting in the addition of new locations resulting in an increase in operating expenses such as rent. Operating expenses increased \$0.9 million from \$5.0 million in 2002 to \$5.9 million in 2003. The increase is primarily attributable to (1) a \$0.46 million increase in operating expense due specifically to the growth of two significant operations, (2) \$0.17 million increase in rent expense due to the expansion of locations, (3) \$0.12 million increase in bad debt expense, and (4) overall increase in operating expenses at other locations as volume continued to grow during 2003.

Based on the changes in revenue and expenses discussed above, operating income decreased by \$678,444 from \$2,401,825 in 2002 to \$1,723,381 in 2003.

During fiscal 2002, the company incurred a charge of \$550,857 relating to a court ruling on litigation against the Company.

Interest expense decreased to \$0.49 million in 2003 from \$0.55 million in 2002. This decrease in interest expense is attributable to a continued decrease in the prime rate, as well as the decrease in the Company's line of credit balance. The rate on the Company's revolving line of credit is currently based on certain financial covenants and may range from prime to prime less .50%. At December 31, 2003 the Company's interest rate on the loan with its lender was at prime less .25% (3.75%).

Other income includes income from rental property, storage fees, and management fees. Other income decreased \$.2 million in 2003 from 2002. This decrease is due primarily to a non-recurring management fee in the amount of \$0.2 million earned in 2002 for management and administrative services the Company provided to Eastern Refrigerated Express, an entity partially owned by the Chief Executive Officer and Chief Financial Officer of the Company.

The Company also recognized minority interest expense of \$154,529 and \$117,552 relating to the minority shareholders' portion of its subsidiary, Carolina National Transportation, Inc.'s, net income for the years ended December 31, 2003 and 2002, respectively. Carolina National Transportation, Inc. is a 60% owned subsidiary of the company.

The Company has net operating loss carry-forwards of approximately \$52 million at December 31, 2003. These carry-forwards are available to offset taxable income in future years and substantially all of these carry-forwards will expire in the years 2005 through 2010. At December 31, 2003, the Company has realized a net deferred tax asset of \$1,200,000. Based on anticipated future taxable income and anticipated future usage of the net operating loss, **2003 Compared to 2002 (continued)**

the Company believes it is more likely than not that the net deferred tax asset will be realized. Due to the uncertainty of the remaining tax asset, a valuation allowance has been maintained for the remaining deferred tax asset at December 31, 2003.

As a result of the factors outlined above, net income in 2003 was \$1,392,986 compared with \$1,684,219 in 2002.

On July 18, 2002, the Company redeemed all of its outstanding Series A preferred stock plus all accrued dividends in exchange for 1,000,000 shares of the Company's common stock. The carrying value of the preferred stock exceeded the fair value of the common stock issued. As a result, in fiscal 2002, the Company has reflected the \$609,541 excess of the carrying value of the preferred stock over the fair value of the common shares as an addition to net income available to shareholders. Series A preferred stock dividends of \$56,573 were accrued up to the date of redemption and have been reflected as a reduction in net income available to common shareholders.

As a result of the preferred stock transaction, net income available to common shareholders was \$1,392,986 in 2003 compared to \$2,237,187 in 2002.

### **Liquidity and Capital Resources**

During fiscal 2004, the Company's financial position continued to improve. The Company had shareholders' equity of \$3.6 million at December 31, 2004 compared with \$3.4 million at December 31, 2003. Working capital at December 31, 2004 was \$5.1 million compared to \$4.9 million at the end of 2003. This increase in working capital is due to continuing profitability.

Net cash provided by (used in) operating activities decreased \$2,690,254 from \$2,419,335 for the year ended December 31, 2003 to (\$270,919) for the year ended December 31, 2004. The decrease in net cash provided by operating activities is attributable to an increase in accounts receivable of \$4,866,657 due to increased revenue at several of the Company's subsidiaries. This increase is somewhat offset by an increase in accounts payable and accrued expenses of \$1,362,471 and an increase in litigation accrual of \$1,700,000. This is due to the fact that the Company's customers typically pay 30-45 days from the invoice date while payment terms to many agents and independent owner operators are typically less than 15 days.

Net cash provided by (used in) investing activities was \$274,470 for the year ended December 31, 2004 compared to (\$127,806) for the year ended December 31, 2003. This increase is primarily the result of proceeds from the sale of fixed assets from a subsidiary of the Company closed in the middle of 2004.

Net cash provided by (used in) financing activities increased \$2,287,978 from (\$2,291,529) for the year ended December 31, 2003 to (\$3,551) for the year ended December 31, 2004. The increase resulted from the increase in the Company's line of credit balance due to the funding needed for the growth of existing terminals. For the year ended December 31, 2003, the Company used cash in financing activities for the repayments of shareholder and equipment loans in the amount of \$477,624 and a reduction in the outstanding borrowing under the line of credit of \$628,602.

The Company has a \$10 million revolving line-of-credit. The maturity date of the Company's revolving line of credit is October 1, 2005. Advances under this revolving line of credit are limited to 75% of eligible accounts receivable. The interest rate is based upon certain financial covenants and

**Liquidity and Capital Resources (continued)**

may range from prime to prime less 0.50%. At December 31, 2004, the interest rate on this line of credit was at prime (5.25%). The Company's accounts receivable, property, and other assets collateralize advances under the agreement. Availability under this line of credit was approximately \$4.5 million at December 31, 2004. The Chief Executive Officer and Chief Financial Officer of the Company guarantee borrowings of up to \$1.5 million. At December 31, 2004, the outstanding borrowings on this line of credit were \$5.5 million.

The Company is dependent upon the funds available under its line of credit agreement for liquidity. As long as the Company can fund the equivalent of 25% of its accounts receivable from funds generated internally from operations or otherwise, this facility has historically provided the Company sufficient liquidity to meet its needs on an ongoing basis.

The line of credit is subject to termination upon various events of default, including failure to remit timely payments of interest, fees, and principal, any adverse change in the business of the Company, or failure to meet certain financial covenants. The required financial covenants include: minimum net worth requirements, total debt service coverage ratio, capital expenditure limitations, and prohibition of additional indebtedness without prior authorization.

At December 31, 2004, the Company was in violation of certain financial covenants. The Company is currently working with the bank to obtain waivers for these violations. The Company believes it will be able to obtain waivers for these financial covenant violations. In addition, the Company believes it will be able to extend this line-of-credit agreement or obtain similar financing from an alternative source prior to the maturity date of this line of credit in October 2005. The balance outstanding under this line-of-credit agreement is classified as a current liability at December 31, 2004.

The Company also has approximately \$2.9 million of debt payable to the Chief Executive Officer and Chief Financial Officer or entities under their control. This debt is subordinate to the lender of the revolving credit facility and matures on October 10, 2006. Repayment of the subordinate debt would require approval from the lender of the revolving credit facility. The subordinated debt has historically been extended prior to maturity.

The following is a table of our contractual obligations and other commercial commitments as of December 31, 2004:

	Total	Less than 1 year	2-3 Years	4-5 Years	After 5 years
Contractual Obligations	-				
Revolving Line of Credit	5,513,360	5,513,360			
Long-Term Debt	2,889,708	0	2,889,708		
Operating Leases	1,790,037	667,875	734,553	221,491	166,118
Total Contractual Obligations	10,193,105	6,181,235	3,624,261	221,491	166,118

(payments include principal only)

The Company does not have any long-term purchase commitments as of December 31, 2004.

### **Environmental Liabilities**

Neither the Company nor its subsidiaries is a party to any Super-fund litigation and does not have any known environmental claims against it except for the one property owned by its subsidiary TC Services, Inc. where soil contamination problems existed or are known to exist currently. The Company has conducted a preliminary evaluation of its potential liability at this site and believes that it has reserved appropriately for remediation of the site or that the fair market value of the property exceeds its net book value by an

### **Environmental Liabilities (continued)**

amount in excess of any remediation cost. There can be no assurance, however, that the cost of remediation would not exceed the expected amounts. The Company continues to monitor soil contamination and may be required to remediate the property in the near future.

### **Inflation**

Changes in freight rates charged by the Company's to their customers are generally reflected in the cost of purchased transportation and commissions paid by the subsidiaries to independent contractors and agents, respectively. Therefore, management believes that future-operating results will be affected primarily by changes in the volume of business. Rising fuel prices are generally offset by a fuel surcharge they pass onto their customers. However, due to the highly competitive nature of the truckload motor carrier industry, it is possible that future freight rates, cost of purchased transportation, as well as fuel prices may fluctuate, affecting the Company's consolidated profitability.

### **Recently Issued Accounting Standards**

In December 2004, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 123(R), "Share-Based Payment". This statement revises FASB Statement No. 123, "Accounting for Stock-Based Compensation" and supersedes APB Opinion No. 25, "Accounting for Stock Issued to Employees." SFAS No. 123(R) focuses primarily on the accounting for transactions in which an entity obtains employee services in share-based payment transactions. SFAS No. 123(R) requires companies to recognize in the statement of operations the cost of employee services received in exchange for awards of equity

instruments based on the grant-date fair value of those awards (with limited exceptions). This Statement is effective as of the first reporting period that begins after June 15, 2005. Accordingly, we will adopt SFAS 123(R) in the third quarter of fiscal 2005. We are currently evaluating the provisions of SFAS 123(R) and have not yet determined the impact that this Statement will have on our results of operations or financial position.

In January 2003, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 46 ("FIN 46"), Consolidation of Variable Interest Entities, an interpretation of ARB 51. The primary objectives of FIN 46 are to provide guidance on the identification of entities for which control is achieved through means other than through voting rights ("variable interest entities" or "VIEs") and how to determine when and which business enterprise should consolidate the VIE (the "primary beneficiary"). This new model for consolidation applies to an entity in which either (1) the equity investors (if any) do not have a controlling financial interest or (2) the equity investment at risk is insufficient to finance that entity's activities without receiving additional subordinated financial support from other parties. In addition, FIN 46 requires that both the primary beneficiary and all other enterprises with a significant variable interest in a VIE make additional disclosures. The provisions of FIN 46 were effective immediately for VIEs

**Recently Issued Accounting Standards (continued)**

created after January 31, 2003. The provisions are effective for the first period beginning after June 15, 2003 for VIEs held prior to February 1, 2003. The Company has not acquired an interest in any VIEs subsequent to January 31, 2003. In December 2003, the FASB issued FIN 46R with respect to variable interest entities created before January 31, 2003, which among other things, revised the implementation date to the first fiscal year or interim period ending after March 15, 2004, with the exception of Special Purpose Entities ("SPE").

The consolidation requirements apply to all SPE's in the first fiscal year or interim period ending after December 15, 2003. The Company has evaluated American Inter-Fidelity Exchange ("AIFE"), a reciprocal insurance company, to determine if this entity qualifies as a VIE.

AIFE provides auto liability insurance to several subsidiaries of the Company as well as other entities some of which are related to the Company by common ownership. AIFE currently receives a majority of its premiums from the Company's subsidiaries. Management has determined that AIFE does not qualify as a VIE and as a result the adoption of FIN 46R did not have a material impact on our consolidated financial statements. However, the Company will continue to evaluate its relationship with AIFE upon any change in circumstances to evaluate the applicability of FIN 46R and other accounting guidance on consolidation.

#### **Off-Balance Sheet Arrangements**

The Company's subsidiaries obtain the majority of their auto liability and cargo insurance from AIFE. For the years ended December 31, 2004, 2003, and 2002, cash paid to AIFE for insurance premiums and deductibles was approximately \$5,673,000, \$5,372,000, and \$3,923,000, respectively. If AIFE incurs a net loss, the loss may be allocated to the various policyholders based on each policyholder's premium as a percentage of the total premiums of AIFE for the related period. There has been no such loss assessment for each of the years ended December 31, 2004, 2003, and 2002, respectively. The Company currently accounts for the majority of the premiums of AIFE. For fiscal 2004, the Subsidiaries of the Company account for approximately 85% of the total premium revenue of AIFE.

At December 31, 2003, AIFE had net worth of approximately \$5.6 million, a portion of which is attributable to other policyholders of AIFE.

The Company has no other off-balance sheet arrangements.

**Item 7a. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to the impact of interest rate changes. The Company has a \$10 million line of credit with a variable interest rate, which may range from prime (5.25% at December 31, 2004) to prime less .50%. At December 31, 2004, the interest rate on this line of credit was at prime. The outstanding balance on this line of credit at December 31, 2004 was \$5.5 million. The Company also has approximately \$2.9 million of debt payable to the Chief Executive Officer and Chief Financial Officer or entities under their control which bears interest at prime plus 1.0%. Based on the Company's outstanding borrowings at December 31, 2004, a 1% increase in the prime rate would result in approximately \$84,000 of additional interest expense annually.

**Item 8. Financial Statements and Supplementary Data.**

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholder and Board of Directors of  
US 1 Industries, Inc.  
Gary, Indiana

We have audited the accompanying consolidated balance sheets of US 1 Industries, Inc. and Subsidiaries as of December 31, 2004 and 2003 and the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2004. We have also audited the schedule listed in the accompanying index. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and schedule are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements and schedule. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements and schedule. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of US 1 Industries, Inc. and Subsidiaries at December 31, 2004 and 2003, and the results of its operations and its cash flows for each of the three years in

the period ended December 31, 2004, in conformity with accounting principles generally accepted in the United States of America.

Also, in our opinion, the schedule presents fairly, in all material respects, the information set forth therein.

BDO Seidman, LLP  
 Chicago, Illinois  
 March 9, 2005, except for Note 12,  
 which is as of March 16, 2005

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**DECEMBER 31, 2004 AND 2003**

ASSETS

	<u>2004</u>	<u>2003</u>
CURRENT ASSETS:		
Accounts receivable-trade, including receivables due from affiliated entities of \$395,000 and \$882,000, respectively and less allowance for doubtful accounts of \$1,023,000 and \$844,000 respectively	\$22,051,059	\$17,910,027
Other receivables, including receivables due from affiliated entities of \$175,000 and \$51,000 in 2004 and 2003, respectively	1,362,631	1,254,243
Prepaid expenses and other current assets	513,069	289,776
Current deferred tax asset	600,000	600,000
Total current assets	24,526,759	20,054,046
FIXED ASSETS:		
Equipment	1,315,233	1,765,979
Less accumulated depreciation and amortization	(768,821)	(794,676)
Net fixed assets	546,412	971,303
ASSETS HELD FOR SALE:		
Land	195,347	195,347
Valuation allowance	(141,347)	(141,347)
Net assets held for sale	54,000	54,000
Non-current deferred tax asset	600,000	600,000
Other assets	392,357	397,745

TOTAL ASSETS

\$26,119,528 \$22,077,094  
=====

The accompanying notes are an integral part of the consolidated financial statements.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**DECEMBER 31, 2004 AND 2003**

LIABILITIES AND SHAREHOLDERS' EQUITY

	<u>2004</u>	<u>2003</u>
CURRENT LIABILITIES:		
Revolving line of credit	\$ 5,513,360	\$ 4,884,758
Current portion of long-term debt	0	194,911
Accounts payable	8,092,664	7,009,625
Other accrued expenses	684,068	377,475
Insurance and claims	1,341,855	788,954
Accrued compensation	296,681	47,863
Accrued interest	1,274,510	1,134,787
Fuel and other taxes payable	95,467	28,138
Accrued Legal Settlements	2,083,333	700,000
	-----	-----
Total current liabilities	19,381,938	15,166,511
	-----	-----
LONG-TERM DEBT(RELATED PARTY), LESS CURRENT PORTION	2,889,708	3,176,153
MINORITY INTEREST	254,946	324,927
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Common stock, authorized 20,000,000 shares; no par value; 11,618,224 shares issued and outstanding as of both December 31, 2004 and December 31, 2003.		
	42,396,639	42,227,725
Accumulated deficit	(38,803,703)	(38,818,225)
	-----	-----
Total shareholders' equity	3,592,936	3,409,500
	-----	-----
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	\$ 26,119,528	\$ 22,077,094
	=====	=====

The accompanying notes are an integral part of the consolidated financial statements.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF INCOME**  
**YEARS ENDED DECEMBER 31, 2004, 2003, AND 2002**

	<u>2004</u>	<u>2003</u>	<u>2002</u>
OPERATING REVENUES	\$143,312,604	\$121,747,394	\$104,186,132
OPERATING EXPENSES:			
Purchased transportation	105,537,666	89,698,731	77,070,624
Commissions	14,293,663	12,348,082	10,278,481
Insurance and claims	6,067,748	5,292,548	4,342,330
Litigation Judgment	1,700,000	0	0
Salaries, wages, and other	8,994,178	6,827,806	5,050,396
Other Operating expenses	6,663,002	5,856,846	5,042,476
Total operating expenses	<u>143,256,257</u>	<u>120,024,013</u>	<u>101,784,307</u>
OPERATING INCOME	<u>56,347</u>	<u>1,723,381</u>	<u>2,401,825</u>
NON OPERATING INCOME (EXPENSE):			
Legal Settlement	0	0	(550,857)
Interest income	21,981	15,301	28,937
Interest expense	(465,903)	(493,411)	(550,248)
Other income, net	<u>516,583</u>	<u>302,244</u>	<u>472,114</u>
Total non operating income (expense)	<u>72,661</u>	<u>(175,866)</u>	<u>(600,054)</u>
NET INCOME BEFORE MINORITY INTEREST	129,008	1,547,515	1,801,771
Minority Interest	<u>(27,748)</u>	<u>(154,529)</u>	<u>(117,552)</u>
NET INCOME BEFORE INCOME TAXES	101,260	1,392,986	1,684,219
Income Taxes	<u>86,738</u>	<u>0</u>	<u>0</u>
NET INCOME BEFORE DIVIDENDS	14,522	1,392,986	1,684,219
Dividends on Preferred Shares	0	0	( 56,573)
Redemption of Redeemable Preferred Stock	<u>0</u>	<u>0</u>	<u>609,541</u>
NET INCOME AVAILABLE TO COMMON SHARES	<u>\$ 14,522</u>	<u>\$ 1,392,986</u>	<u>\$ 2,237,187</u>
Basic Net Income			
Per Common Share	<u>\$0.00</u>	<u>\$0.12</u>	<u>\$0.20</u>
Diluted Net Income			
Per Common Share	<u>\$0.00</u>	<u>\$0.11</u>	<u>\$0.20</u>
WEIGHTED AVERAGE COMMON SHARES OUTSTANDING -			
BASIC	<u>11,618,224</u>	<u>11,618,224</u>	<u>11,075,758</u>
WEIGHTED AVERAGE COMMON SHARES OUTSTANDING-			
DILUTED	<u>11,964,174</u>	<u>11,852,507</u>	<u>11,075,758</u>

The accompanying notes are an integral part of the consolidated financial statements.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
**YEARS ENDED DECEMBER 31, 2004, 2003, and 2002**

	Common Stock Shares	Amount	Accumulated Deficit	Total
Balance at				
December 31, 2001	10,618,224	\$40,844,296	\$(41,838,857)	\$(994,561)
Cumulative Dividends On Preferred Stock			(56,573)	(56,573)
Conversion of Redeemable Preferred Stock into Common Stock	1,000,000	1,159,541		1,159,541
Minority interest in subsidiary (Note 11)		64,802		64,802
Net Income			<u>1,684,219</u>	<u>1,684,219</u>
Balance at				
December 31, 2002	11,618,224	\$42,068,639	\$(40,211,211)	\$1,857,428
Grant of restricted Common Stock (Note 10)		94,286		94,286
Minority interest in subsidiary (Note 11)		64,800		64,800
Net Income			<u>1,392,986</u>	<u>1,392,986</u>
Balance at				
December 31, 2003	11,618,224	\$42,227,725	\$(38,818,225)	\$3,409,500
Grant of restricted Common Stock (Note 10)		125,714		125,714
Minority interest in Subsidiary (Note 11)		43,200		43,200
Net Income			<u>14,522</u>	<u>14,522</u>
Balance at				
December 31, 2004	<u>11,618,224</u>	<u>\$42,396,639</u>	<u>\$(38,803,703)</u>	<u>3,592,936</u>

The accompanying notes are an integral part of the consolidated financial statements.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002**

	2004	2003	2002
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 14,522	\$ 1,392,986	\$ 1,684,219
Adjustments to reconcile net income to net cash provided by(used in) operating activities:			
Depreciation and amortization	316,875	301,303	287,642
Compensation expense resulting from Issuance of equity in subsidiary	100,000	150,000	150,000
Compensation expense resulting from restricted stock grant to officers	125,714	94,286	0
Provision for bad debt	726,000	765,000	648,768
Minority interest	27,748	154,529	117,552
(Gain) Loss on disposal of fixed assets	(166,454)	12,575	4,060
Changes in operating assets and liabilities:			
Accounts receivable-trade	(4,867,032)	(2,206,115)	(5,171,298)
Other receivables	(108,388)	394,356	(273,764)
Prepaid expenses and other current assets	(217,905)	227,380	57,228
Accounts payable	1,079,304	1,381,716	2,158,243
Accrued expenses	306,593	(25,821)	151,437
Insurance and claims	552,901	(255,268)	414,426
Accrued interest	139,723	125,394	35,355
Accrued compensation	248,818	(39,410)	7,728
Fuel and other taxes payable	67,329	(53,576)	(514)
Accrued legal settlements	<u>1,383,333</u>	<u>0</u>	<u>560,000</u>
Net cash (used in) provided by operating activities	<u>(270,919)</u>	<u>2,419,335</u>	<u>831,082</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Additions to fixed assets	(149,950)	(155,706)	(219,739)
Proceeds from sale of fixed assets	<u>424,420</u>	<u>27,900</u>	<u>62,655</u>
Net cash provided by (used in) investing activities	<u>274,470</u>	<u>(127,806)</u>	<u>(157,084)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Net borrowings (repayments) under line of credit	628,602	(1,233,722)	(647,519)
Proceeds from long term debt	0	0	282,216
Principal payments of long-term debt	(477,624)	(484,453)	(400,754)
Net repayments of shareholder loans	0	(455,801)	(230,001)
Distribution to minority interest	<u>(154,529)</u>	<u>(117,553)</u>	<u>0</u>
Net cash used in financing activities	<u>(3,551)</u>	<u>(2,291,529)</u>	<u>(996,058)</u>
NET CHANGE IN CASH	0	0	(322,060)
CASH, BEGINNING OF YEAR	0	0	322,060
CASH, END OF YEAR	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>

SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION--

Cash paid during year for interest	\$326,180	\$469,050	\$574,361
------------------------------------	-----------	-----------	-----------

The Company recorded \$56,573 in 2002 for dividends on preferred stock.

On July 18, 2002, the Company redeemed all of the outstanding Series A redeemable preferred stock (1,094,224 shares) plus all accrued dividends through the issuance of 1,000,000 shares of the Company's common stock as further discussed in Note 3.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)**  
**YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002**

The Company recognized \$100,000, \$150,000 and \$150,000 of compensation expense for the years ended December 31, 2004, 2003, and 2002, respectively for the issuance of common stock of a subsidiary, which was issued to key employees as further discussed in Note 11.

The company recognized \$125,712 and \$94,286 of compensation expense for the years ended December 31, 2004 and 2003 respectively, for restricted stock granted to executives.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002**

The accompanying notes are an integral part of the consolidated financial statements.

**1. OPERATIONS**

The Company, through its subsidiaries, is primarily an interstate truckload carrier of general commodities, which uses independent agents and owner-operators to contract for and haul freight for its customers in 48 states with a concentration in the Southeastern United States. One agent accounted for 10.3%, 11.3%, and 6.9% of the Company's revenue for the years ended December 31, 2004, 2003, and 2002 respectively.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Principles of Consolidation*--The consolidated financial statements include the accounts of US 1 Industries, Inc. and its subsidiaries. All significant intercompany accounts and transactions have been eliminated.

*Allowance for Doubtful Accounts*--The Subsidiaries record an allowance for doubtful accounts based on specifically identified amounts that it believes to be uncollectible. The Company also records an additional allowance based on percentages of aged receivables, which are determined based on historical experience and an assessment of the general financial conditions affecting its customer base. If actual collections experience changes, revisions to the allowance may be required. After all attempts to collect a receivable have failed, the receivable is written off against the allowance.

*Revenue Recognition*--Revenue for freight in transit is recognized upon delivery. Amounts payable for purchased transportation, commissions and insurance expense are accrued when the related revenue is recognized.

*Fixed Assets*--Fixed assets are stated at cost and depreciated using the straight-line method over the estimated useful lives of the related assets, which range from three to eight years.

*Assets Held for Sale*--Such assets comprise real estate, not required for the Company's operations, which is carried at the lower of historical cost or estimated net realizable value. See Note 13.

*Long-Lived Assets*--The Company assesses the realizability of its long-lived assets in accordance with statement of Financial Accounting Standards No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets".

*Accounting Estimates*--The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

*Income Taxes*--Deferred income taxes are recognized for the tax consequences of "temporary differences" by applying enacted statutory tax rates applicable to future years to differences between the financial statement carrying amounts and the tax bases of existing assets. In addition, the amounts of any future tax benefits are reduced by a valuation allowance to the extent such benefits are not expected to be fully utilized.

*Earnings Per Common Share*--The Company computes earnings per share under Statement of Financial Accounting Standards No. 128 "Earnings Per Share." The statement required presentation of two amounts, basic and diluted earnings per share. Basic earnings per share are computed by dividing income available to common stockholders by the weighted average common shares outstanding. Dilutive earnings per share would include all common stock equivalents. There are 400,000 common stock equivalents at December 31, 2004 and 2003. There were no common stock equivalents at December 31, 2002.

*Business Segments*--Statement of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information" requires public enterprises to report certain information about reporting segments in financial statements. The Company presents its operations in one business segment.

**Recent Accounting Pronouncements**

In December 2004, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 123(R), "Share-Based Payment". This statement revises FASB Statement No. 123, "Accounting for Stock-Based Compensation" and supersedes APB Opinion No. 25, "Accounting for Stock Issued to Employees." SFAS No. 123(R) focuses primarily on the accounting for transactions in which an entity obtains employee services in share-based payment transactions. SFAS No. 123(R) requires companies to recognize in the statement of operations the cost of employee services received in exchange for awards of equity instruments based on the grant-date fair value of those awards (with limited exceptions). This Statement is effective as of the first reporting period that begins after June 15, 2005. Accordingly, we will adopt SFAS 123(R) in the third quarter of fiscal 2005. We are currently evaluating the provisions of SFAS 123(R) and have not yet determined the impact that this Statement will have on our results of operations or financial position.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

In January 2003, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 46 ("FIN 46"), Consolidation of Variable Interest Entities, an interpretation of ARB 51. The primary objectives of FIN 46 are to provide guidance on the identification of entities for which control is achieved through means other than through voting rights ("variable interest entities" or "VIEs") and how to determine when and which business enterprise should consolidate the VIE (the "primary beneficiary"). This new model for consolidation applies to an entity in which either (1) the equity investors (if any) do not have a controlling financial interest or (2) the equity investment at risk is insufficient to finance that entity's activities without receiving additional subordinated financial support from other parties. In addition, FIN 46 requires that both the primary beneficiary and all other enterprises with a significant variable interest in a VIE make additional disclosures. The provisions of FIN 46 were effective immediately for VIEs created after January 31, 2003. The provisions are effective for the first period beginning after June 15, 2003 for VIEs held prior to February 1, 2003. The Company has not acquired an interest in any VIEs subsequent to January 31, 2003. In December 2003, the FASB issued FIN 46R with respect to variable interest entities created before January 31, 2003, which among other things, revised the implementation date to the first fiscal year or interim period ending after March 15, 2004, with the exception of Special Purpose Entities ("SPE"). The consolidation requirements apply to all SPE's in the first fiscal year or interim period ending after December 15, 2003. The Company has evaluated American Inter-Fidelity Exchange ("AIFE"), a reciprocal insurance company, to determine if this entity qualifies as a VIE.

AIFE provides auto liability insurance to several subsidiaries of the Company as well as other entities some of which are related to the Company by common ownership. AIFE currently receives a majority of its premiums from the Company's subsidiaries. Management has determined that AIFE does not qualify as a VIE and as a result the adoption of FIN 46R did not have a material impact on our consolidated financial statements. However, the Company will continue to evaluate its relationship with AIFE upon any change in circumstances to evaluate the applicability of FIN 46R and other accounting guidance on consolidation.

**3. REDEMPTION OF REDEEMABLE PREFERRED STOCK**

On February 19, 2002, the Company's Board of Directors approved the redemption of all of the outstanding Series A redeemable preferred stock (1,094,224 shares) plus all accrued dividends through the issuance of 1,000,000 shares of the Company's common stock. The conversion was finalized on July 18, 2002.

The carrying value of the preferred stock exceeded the fair value of the common stock issued by \$609,541. As a result, the Company recorded this amount as an addition to net income available to common shareholders by offsetting charges and credits to common stock without any effect in total shareholders' equity.

#### 4. EARNINGS PER COMMON SHARE

The Company calculates earnings per share ("EPS") in accordance with SFAS No. 128. Following is the reconciliation of the numerators and denominators of the basic and diluted EPS.

Numerator	2004	2003	2002
Net income	\$ 14,550	\$ 1,392,986	\$ 1,684,219
Dividends on preferred shares	0	0	( 56,573)
Redemption of redeemable preferred stock			609,541
	-----	-----	-----
Net income available to common shareholders for basic EPS	14,550	1,392,986	2,237,187
Net income attributable to unvested minority interest shares in subsidiary	(14,787)	(51,509)	0
	-----	-----	-----
Net (loss) income available to common shareholders for diluted EPS	(237)	1,341,477	2,237,187
 Denominator			
Weighted average common shares outstanding for basic EPS	11,618,224	11,618,224	11,075,758
Effect of diluted securities			
Unvested restricted stock granted to employees	345,950	234,283	0
	-----	-----	-----
Weighted average shares outstanding for diluted EPS	11,964,174	11,852,507	11,075,758

#### 5. RELATED PARTY TRANSACTIONS

One of the Company's subsidiaries provides safety, management, and accounting services to companies controlled by the Chief Executive Officer and Chief Financial Officer of the Company. These services are priced to cover the cost of the employees providing the services. Revenues related to those services was approximately \$119,000, \$104,000 and \$69,000 in 2004, 2003, and 2002, respectively. Also during 2002, the Company earned a management fee of approximately \$200,000 for non-recurring management services provided to Eastern Refrigerated Express, Inc., an entity partially owned by the CEO and CFO of the Company. These management fees have been classified as other income in the consolidated statement of income for the year ended December 31, 2002. Accounts receivable due from entities affiliated through common ownership was \$175,000 and \$51,000 as of December 31, 2004 and 2003, respectively.

One of the Subsidiaries insurance providers, American Inter-Fidelity Exchange (AIFE), is managed by a Director of the Company and the Company has an investment of \$126,461 in the provider. AIFE provides auto liability and cargo insurance to several subsidiaries of the Company as well as other entities related to the Company by common ownership. For the years ended December 31, 2004, 2003 and 2002, cash paid to AIFE for insurance premiums and deductibles was approximately \$5,673,000, \$5,373,000, and \$3,923,000, respectively.

The Subsidiaries exercised no control over the operations of AIFE. As a result, the Company recorded its investment in AIFE under the cost method of accounting for each of the three years in the period ended December 31, 2004. Under the cost method, the investment in AIFE is reflected at its original amount and income is recognized only to the extent of dividends paid by the investee. There were no dividends declared by AIFE for the years ended December 31, 2004, 2003 and 2002.

**US 1 INDUSTRIES, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

**5. RELATED PARTY TRANSACTIONS (continued)**

If AIFE incurs a net loss, the loss may be allocated to the various policyholders based on each policyholder's premium as a percentage of the total premiums of AIFE for the related period. There has been no such loss assessment for each of the three years in the period ended December 31, 2004. The Subsidiaries currently account for the majority of the premiums of AIFE. For fiscal 2004, the Company thru its subsidiaries accounted for approximately 85% of the total premium revenue of AIFE. At December 31, 2003, AIFE had net worth of approximately \$5.6 million, a portion of which is attributable to other policyholders of AIFE.

In addition, the Chief Executive Officer and Chief Financial Officer, as well as a director of the Company, are shareholders of American Inter-Fidelity Corporation (AIFC), which serves as the attorney in fact of AIFE. AIFC is entitled to receive a management fees from AIFE. During 2003, AIFE paid management fees of \$282,000 to AIFE which AIFE then paid as dividends totaling \$282,000 to these officers and directors of the Company. During 2004, AIFE paid management fees of \$277,387 to AIFC which AIFC then paid as dividends totaling \$277,387 to these officers and directors of the Company. No such amounts were paid during fiscal 2002.

In 2004 the company paid consulting fees of \$24,000 to one of its directors relating to insurance services. The consulting fee paid for 2003 was \$8,000.

One of the Companies subsidiaries conducts business with freight companies under the control of a director of the Company. Accounts receivable at December 31, 2004 and 2003 include \$395,000 and \$882,000, due from or guaranteed by these companies.

The Company has notes payable due to its Chief Executive Officer, Chief Financial Officer, and August Investment Partnership, an entity affiliated through common ownership, as described in Note 8.

**6. LEASES**

The Company leases its administrative offices in Gary, Indiana on a month-to-month basis for \$3,000 per month. Patriot Logistics, Inc. leases office space in Fort Smith, Arkansas on a month-to-month basis for \$3,216. Both offices lease their space from The Company's President/Chief Executive Officer, and Treasurer/Chief Financial Officer who are both directors of the Company.

In addition, the Company's subsidiaries lease office space and land in Mississippi, Texas, South Carolina, Louisiana, Georgia, Missouri, North Carolina, Indiana, California, Arkansas, and Florida under operating leases ranging from one to six years.

Rent expense under these operating leases was \$837,000, \$672,000 and \$507,000 for the years ended 2004, 2003, and 20021 respectively.

## 6. LEASES (continued)

Future commitments under these operating leases are as follows:

2005	668,000
2006	437,000
2007	297,000
2008	111,000
2009	111,000
2010	111,000
2011	55,000
	<u>\$1,790,000</u>

## 7. BANK LINE OF CREDIT

The Company and its subsidiaries have a \$10.0 million line of credit that matures on October 1, 2005. Advances under this revolving line of credit are limited to 75% of eligible accounts receivable. Availability under this line of credit was \$4,486,640 at December 31, 2004. The interest rate is based upon certain financial covenants and may range from prime to prime less .50%. At December 31, 2004, the interest rate on this line of credit was at prime (5.25%). The Company's accounts receivable, property, and other assets collateralize advances under the agreement. Borrowings up to \$1.5 million are guaranteed by the Chief Executive Officer and Chief Financial Officer of the Company. The outstanding borrowings on this line of credit were \$5.5 and \$4.9 million at December 31, 2004 and 2003, respectively.

This line of credit is subject to termination upon various events of default, including failure to remit timely payments of interest, fees and principal, any adverse change in the business of the Company or failure to meet certain financial covenants. Financial covenants include: minimum net worth requirements, total debt service coverage ratio, capital expenditure limitations, and prohibition of additional indebtedness without prior authorization. At December 31, 2004, the Company was in violation of certain financial covenants. The Company is currently working with its Lender to obtain waivers for these violations. The balance outstanding under this line-of-credit agreement is classified as a current liability at December 31, 2004.

In October 2003, the Company's lender granted them an equipment line of credit in the amount of \$500,000. Although the Company has not utilized this equipment line of credit, the interest rate will range from prime to prime less 0.50% per annum based on certain financial covenants. This equipment line of credit expires on October 1, 2005. In March 2005, the Company and its lender agreed to terminate this equipment line of credit. There were no outstanding borrowings under this equipment line of credit from December 31, 2004 through the date of termination.

## 8. LONG-TERM DEBT

Long-term debt at December 31, 2004 and 2003 comprises:

	<u>2004</u>	<u>2003</u>
Note payable to the Chief Executive Officer And Chief Financial Officer, interest at prime + .75%, interest only payments required, with principal balance due October 2006.	\$2,039,708	\$2,039,707
Mortgage note payable to the Chief Executive Officer and Chief Financial Officer collateralized by land, interest at prime + .75%, interest only payments required, principal balance due October 2006	500,000	500,000
Note payable to August Investment Partnership, interest at prime + .75%, interest only payments required, principal balance due October 2006	250,000	250,000
Mortgage note payable to August Investment Partnership, interest at prime + .75%, interest only payments required, principal balance due October 2006	<u>100,000</u>	<u>100,000</u>
Subtotal - related party debt	\$2,889,708	\$2,889,707
Equipment loans repaid in 2004	0	469,482
Other	<u>0</u>	<u>11,878</u>
Total debt	2,889,708	3,371,067
Less current portion	<u>0</u>	<u>194,911</u>
Total long-term debt	\$ 2,889,708	\$ 3,176,156
	=====	=====

Interest expense on related party notes was approximately \$131,000, \$137,000, and \$176,000 for the years ended December 31, 2004, 2003, and 2002, respectively.

2 The related party notes are subordinate to the lender of the revolving line of credit facility and repayment of this debt would require the lender's approval. Historically this debt has been extended prior to maturity.

Scheduled maturities of the long-term debt at December 31, 2004 are due as follows:

2005	\$ 0
2006	<u>2,889,708</u>
	\$2,889,708
	=====

## 9. INCOME TAXES

The following summary reconcile income taxes at the maximum federal statutory rate with the effective rates for 2004, 2003, and 2002 (in thousands):

December 31,	2004	2003	2002
Income tax expense at statutory rate	34,000	474,000	573,000
State income tax expense, net of federal tax benefit	20,000	70,000	91,000
Other	(45,262)	97,000	
Adjustment of valuation allowance	78,000	(641,000)	(664,000)
	86,738	-	-

## 9. INCOME TAXES (continued)

The Company and its wholly-owned subsidiaries file a consolidated federal income tax return. Carolina National, the Company's 60% owned subsidiary files a separate federal income tax return.

Deferred income taxes consist of the following:

December 31,	2004	2003	2002
Total deferred tax assets, relating principally to net operating loss carry-forwards	\$21,228,000	\$21,150,000	\$21,597,000
Less valuation allowance	(20,028,000)	(19,950,000)	(20,397,000)
Total net deferred tax asset	\$ 1,200,000	\$ 1,200,000	\$ 1,200,000

At December 31, 2004 and 2003, the Company has realized a net deferred tax asset of \$1,200,000 as it is more likely than not that this amount will be realized as a result of anticipated future taxable income to be generated by the Company. Due to the uncertainty of realization, a valuation allowance has been maintained for the remaining deferred tax asset at December 31, 2004.

The Company has net operating loss carry-forwards of approximately \$50 million at December 31, 2004. These carry-forwards are available to offset taxable income in future years and substantially all of these carry-forwards will expire in the years 2005 through 2010. Approximately 86% of the Company's net operating loss carry forwards will expire in 2005 and 2006.

## 10. STOCK COMPENSATION

In March 2003, the Company granted 400,000 shares (200,000 each) of common stock to the Company's Chief Executive Officer and Chief Financial Officer, subject to the continued employment of these employees through December 2004. In December 2004, the Board of Directors extended the vesting period until March 2005. As a result, the Company incurred \$125,712 and \$94,286 of compensation expense (based on the quoted market price of the Company's stock on the date of grant) for the years ended December 31, 2004 and 2003, respectively. These shares of common stock vest on March 31, 2005.

## 11. MINORITY INTEREST

The Company entered into an agreement with certain key employees of its subsidiary, Carolina National Transportation, Inc. ("Carolina"), in which these employees earned a 40% ownership interest in Carolina over a three year period, beginning in the year following which Carolina achieved positive retained earnings, contingent upon certain restrictions, including continued employment at Carolina. In 2001, Carolina achieved positive retained earnings. As a result, the Company incurred total compensation expense of \$400,000 over the three-year vesting period. The Company incurred compensation

expense of \$100,000 for the year ended December 31 2004, and \$150,000 for each of the years ended December 31, 2003 and 2002. The excess of the fair value of the Carolina common stock issued over the book value of this common stock is reflected as a credit to common stock in the amount of \$43,200, \$64,800, and \$64,802 for fiscal 2004, 2003, and 2002, respectively. The Company also recognized minority interest expense of \$27,748, \$154,529, and \$117,552 relating to the employees' portion of Carolina's net income for the years ended December 31, 2004, 2003, and 2002, respectively. Carolina paid dividends of \$154,529 and \$117,553 to the minority shareholders for the years ended December 31, 2004 and 2003, respectively. Net income for Carolina was \$69,370, \$515,096, and \$783,677, for the years ended 2004, 2003, and 2002, respectively.

## **12. COMMITMENTS AND CONTINGENCIES**

### ***Litigation***

On March 16, 2005, a jury entered a verdict against a subsidiary of the Company, Cam Transport, Inc. ("CAM") in the amount of \$1.7 million in a personal injury case relating to an auto accident which occurred on March 22, 2001 entitled Lina Bennett vs Toby M. Ridgeway and Cam Transport, Inc. in the Court of Common Pleas of Allendale County, South Carolina. As a result, the Company recorded a charge of \$1.7 million related to this litigation for the year-ended December 31, 2004. This amount is included in accrued legal settlements at December 31, 2004.

CAM maintains auto liability insurance up to a maximum of \$1 million per occurrence for litigation related to such accidents. However, CAM's insurer, American Inter-fidelity Exchange, has filed a declaratory judgment action asserting that it is not obligated to provide insurance coverage on this matter. As a result of the uncertainty regarding the insurance coverage for this claim, the expense recorded for this litigation has not been reduced by any expected amounts to be recovered from the insurance company and there is no receivable established at December 31, 2004 for the amount which could possibly be covered under the auto liability policy. As a result, Cam Transport, Inc. does not have sufficient net worth or assets to satisfy the verdict, and substantially all of Cam Transport, Inc.'s assets are pledged to its lender.

The Company and its subsidiaries are involved in other litigation in the normal course of its business. Management intends to vigorously defend these cases. In the opinion of management, the other litigation now pending will not have a material adverse affect on the consolidated financial statements of the Company.

## **13. ENVIRONMENTAL MATTERS**

The Company's subsidiary, TC Services, Inc owns a piece of property in Phoenix where soil contamination problems exist. The Company has been working with regulatory officials to eliminate new contamination sources and determine the extent of existing problems. Estimates of the cost to complete the future remediation of approximately \$141,000 are considered in the land valuation allowance at December 31, 2004 and 2003.

**14. SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)**

(In thousands, except per share data)

	Operating Revenue	Operating Income	Net Income	Net Income per share basic	Net Income per share diluted
2004	\$143,313	\$56	\$15	\$0.00	\$0.00
Quarters:					
Fourth	39,614	(998)	(825)	(0.07)	(0.07)
Third	36,994	578	508	0.04	0.04
Second	35,975	176	100	0.01	0.01
First	30,730	300	232	0.02	0.02
2003	\$121,747	\$1,723	\$1,393	\$0.12	\$0.12
Quarters:					
Fourth	30,608	246	128	0.01	0.01
Third	30,877	324	238	0.02	0.02
Second	31,709	626	540	0.05	0.04
First	28,553	527	487	0.04	0.04

**US 1 INDUSTRIES, INC.  
VALUATION AND QUALIFYING ACCOUNTS  
YEARS ENDED DECEMBER 31, 2003 AND 2004**

**Schedule II**

Description	Balance At Beginning of Year	Charged to Costs and Expenses	Write-Offs, Retirements & Recoveries	Balance At End of Year
<b>Year Ended December 31, 2003</b>				
Allowance for Doubtful Accounts Receivable	\$460,000	\$765,000	\$392,000	\$833,000

**Year Ended December 31, 2004**

Allowance for Doubtful Accounts Receivable	\$844,000	\$726,000	\$547,000	\$1,023,000
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**Item 9. Changes in and Disagreements with Accountants' on Accounting and Financial Disclosure.**

None.

**Item 9A. Controls and Procedures**

*Evaluation of Disclosure Controls and Procedures.* Our management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as such terms are defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, our disclosure controls and procedures are effective and are reasonably designed to ensure that all material information relating to the Company that is required to be included in reports filed or submitted under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission.

*Internal Control Over Financial Reporting.* There were no changes in the Company's internal control over financial reporting during the quarter ended December 31, 2004 identified in connection with the evaluation thereof by the Company's management, including the Chief Executive Officer and Chief Financial Officer, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

**Item. 9B. Other Information**

None.

### PART III

#### Item 10. Directors and Executive Officers of the Registrant.

##### DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The directors and executive officers of the company as of February 11, 2005 were as follows

NAME	AGE	POSITION
----	---	-----
Michael E. Kibler	64	President, Chief Executive Officer, and Director
Harold E. Antonson	65	Chief Financial Officer, Treasurer, and Director
Lex Venditti	52	Director
Robert I. Scissors	71	Director
Brad James	49	Director
William Sullivan	57	Director

<u>Name</u>	<u>Office and Experience</u>
Michael E. Kibler	Mr. Kibler is President and Chief Executive Officer of the Company and has held these positions since September 13, 1993 and has been a director since 1993. He also has been President of Enterprise Truck Lines, Inc., an interstate trucking company engaging in operations similar to the Company's, since 1972. Mr. Kibler is a partner of August Investment Partnership and is also a shareholder of American Inter-fidelity Corporation, the attorney-in-fact of AIFE, an affiliated entity that provides auto liability and cargo insurance to the Company.

Harold E. Antonson	Mr. Antonson is Chief Financial Officer of the Company, a position he has held since March 1998. Mr. Antonson is a certified public accountant. Prior to joining the Company, he was Secretary/Treasurer of AIFE. Mr Antonson is also a partner in August Investment Partnership. Mr. Antonson was elected a director and Treasurer of the Company in November 1999. Mr. Antonson is also a shareholder of American
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Interfidelity Corporation, the attorney-in-fact of AIFE, an affiliated entity that provides auto liability and cargo insurance to the Company.

Lex Venditti

Mr. Venditti has served as a director of the Company since 1993. Mr. Venditti is the General Manager of AIFE, an insurance reciprocal located in Indiana. Mr. Venditti is also a shareholder of AIFE, the attorney-in-fact of AIFE, an affiliated entity that provides auto liability and cargo insurance to the Company.

**Item 10. Directors and Executive Officers of the Registrant (continued)**

<u>Name</u>	<u>Office and Experience</u>
Robert Scissors	Mr. Scissors has been a Director of the Company since 1993. Mr. Scissors began his career in the Insurance Industry in 1957. In 1982, Mr. Scissors joined a brokerage firm called Alexander/Alexander where he worked until retiring in 1992. Mr. Scissors currently works as an insurance consultant and broker.
Brad James	Mr. James is the President of Seagate Transportation Services, Inc. Mr. James graduated from Bowling Green University with a Bachelors Degree in Business Administration. He has been in the trucking industry since 1977. Mr. James was elected a director of the Company in 1999.
William Sullivan	Mr. Sullivan has been the president of One Call Motor Freight Inc. since 1981. He is also the President of Unity Logistic Services, Inc. since June 2000. Mr. Sullivan was elected a director of the Company in 2003. Mr. Sullivan has over 30 years experience in the trucking industry.

There are no family relationships between any director or executive officer of the Company.

**Code of Ethics**

The Company has adopted a Code of Ethics that applies to the Chief Executive Officer and the Chief Financial Officer a copy of which was filed as Exhibit 14.1 to the 2003 Form 10-K.

**Audit Committee and Audit Committee Financial Expert**

The Company has an audit committee consisting of Lex Venditti and Robert Scissors. The Company's Board of Directors has determined that Mr. Venditti is an "audit committee financial expert" as defined under SEC rules. However, because of his position as general manager of AIFE and as a shareholder of

American Inter-Fidelity Corporation, Mr. Venditti is not considered an independent director as defined under Rule 10A-3(b) of the Exchange Act. In addition, Mr. Scissors receives fees for consulting services provided to the Company and is also not considered an independent director.

The audit committee is responsible for selecting the Company's independent auditors and approving the scope, fees and terms of all audit engagements and permissible non-audit services provided by the independent auditor, as well as assessing the independence of the Company's independent auditor from management. The audit committee also assists the Board in oversight of the Company's financial reporting process and integrity of its financial statements, and also reviews other matters with respect to the Company's accounting, auditing and financial reporting practices as it may find appropriate or may be brought to its attention.

**Compliance with Section 16(a) of the Exchange Act**

Section 16(a) of the Securities Exchange Act of 1934 requires the Company's directors, executive officers and persons who own more than 10% of the outstanding common stock of the Company to file with the Securities and Exchange Commission reports of changes in ownership of the common stock of the Company held by such persons. Officers, directors and greater than 10% shareholders are also required to furnish the Company with copies of all forms they file under this regulation. To the Company's knowledge based solely on a review of the copies of such reports furnished to the Company and representations that no other reports were required, during the year ended December 31, 2004, except for a Form 4 that was filed late by Mr. Scissors, all Section 16(a) filing requirements applicable to its officers, directors and greater than 10% shareholders were complied with.

**Director Nomination Procedures**

The Company will consider nominations for directors submitted by shareholders of the Company. Shareholders who wish to make a nomination for director should send the name and biographical information with respect to such nominee to the Secretary of the Company along with a certification by such nominee that he or she will serve as a director of the Company if elected.

**Item 11. Executive Compensation**

The following Summary Compensation Table sets forth compensation paid by the Company during the years ended December 31, 2004, 2003 and 2002 to Mr. Michael E. Kibler, Chief Executive Officer and Mr. Harold Antonson, Chief Financial Officer, where applicable. No other officer of the Company earned in excess of \$100,000.

Summary Compensation Table

Name and Position	Year	Annual Compensation		
		Salary	Bonus	Other(1)
-----	----	-----	-----	-----
Michael Kibler	2004	99,840	34,308	0
President	2003	106,580	0	110,000
	2002	90,186	0	0

Harold Antonson	2004	57,600	34,308	0
Chief Financial Officer	2003	106,580	0	110,000
	2002	90,186	0	0

(1) In March 2003, the Company granted 400,000 shares (200,000 each) of common stock to the Company's Chief Executive Officer and Chief Financial Officer, subject to the continued employment of these employees through December 2004. As a result, the Company will incur approximately \$220,000 of compensation expense (based on the quoted market price of the Company's stock on the date of grant) over the vesting period of this grant. These shares of common stock vest on March 31, 2005.

#### Option exercises and option values

No stock options were issued to Mr. Michael E. Kibler, Chief Executive Officer and Mr. Harold Antonson, Chief Financial Officer, in 2004 and no stock options were outstanding as of December 31, 2004.

#### Item 12. Security Ownership of Certain Beneficial Owners and Management.

##### Security Ownership of Management

The following table sets forth the number and percentage of shares of Common Stock that as of March 9, 2005 are deemed to be beneficially owned by each director of the company and director nominee, by each executive officer of the Company and by all directors and executive officers of the company as a group

Name and position	Number of Shares of Common Stock Beneficially Owned	Percentage of Class
-----	-----	-----
Harold E. Antonson Chief Financial Officer, Treasurer and Director	3,311,746 (1)	28.5%
Michael E Kibler Director, President and Chief Executive Officer	3,252,301 (1)	28%
Brad A. James Director	1,317,927 (2)	11.3%
Robert I. Scissors, Director	64,770 (3)	*
William Sullivan Director	18,000 (4)	*
Lex L. Venditti Director	217,500 (2)	1.9%
All Directors and Executive Officers	4,326,259	41.1%

\* Indicates less than 1% ownership.

- (1) Includes shares held by August Investment Partnership, August Investment Corporation, Eastern Refrigerated Transport, Inc., Enterprise Truck Lines, Inc., Seagate Transportation Services, Inc., and American Inter-Fidelity Exchange, of which Messrs. Kibler and Antonson are either directors, partners, or significant shareholders or otherwise share the voting and dispositive authority with respect to these shares. Also includes 200,000 shares of restricted stock for each.
- (2) Includes shares held by Seagate Transportation Services, Inc. and August Investment Partnership, of which Mr. James is a director, partner or significant shareholder.
- (3) Includes 11,770 shares held in the Saundra L. Scissors Trust of which Mr. and Mrs. Scissors are joint trustees.
- (4) Includes 18,000 shares owned by ERX, Inc. of which Mr. Sullivan is a controlling owner.
- (5) Includes shares held by American Inter-Fidelity Exchange, of which Mr. Venditti is a director and significant shareholder of the attorney-in-fact.

**Security Ownership of Certain Beneficial Owners**

The following table sets forth the number and percentage of shares of Common Stock beneficially owned as of March 9, 2004 by any person who is known to the Company to be the beneficial owner of more than five percent of the outstanding shares of Common Stock:

Name and Address of Beneficial Owner -----	Number of Shares of Common Stock Beneficially Owned -----	Percentage of Class -----
Harold E. Antonson 8400 Louisiana Street Merrillville, IN 46410	3,311,746 (1)	28.5%
August Investment Partnership 8400 Louisiana Street Merrillville, IN 46410	1,150,946	9.9%
Brad A. James Director	1,317,927 (2)	11.3%
Michael Kibler 8400 Louisiana Street Merrillville, IN 46410	3,252,301 (1)	28.0%

- (1) Includes shares held by August Investment Partnership, August Investment Corporation, Eastern Refrigerated Transport, Inc., Enterprise Truck Lines, Inc., Seagate Transportation Services, Inc., and American Inter-Fidelity Exchange, of which Messrs. Kibler and Antonson are either directors, partners, or significant shareholders or otherwise share the voting and dispositive authority with respect to these shares. Also includes 200,000 shares of restricted stock for each.
- (2) Includes shares held by Seagate Transportation Services, Inc. and August Investment Partnership, of which Mr. James is a director, partner or significant shareholder.

**Item 13. Certain Relationships and Related Transactions.**

The Company's administrative offices are at 1000 Colfax, Gary, Indiana.

The Company leases its administrative offices of approximately 5,000 square feet on a month-to-month basis for \$3,000 per month. Patriot Logistics, Inc. leases office space in Fort Smith, Arkansas of approximately 13,250 square feet on a month-to-month basis for \$3,216. Both companies lease their space from Mr. Michael E. Kibler, President, Chief Executive Officer, and a director of the Company, and Mr. Harold E. Antonson, Treasurer, Chief Financial Officer, and a director of the Company.

One of the Company's subsidiaries provides safety, management, and accounting services to companies controlled by the Chief Executive Officer and Chief Financial Officer of the Company. These services are priced to cover the cost of the employees providing the services. Revenues related to those services were approximately \$119,000, \$104,000, and \$69,000 in 2004, 2003, and 2002, respectively. Also during 2002, the Company earned a management fee of approximately \$200,000 for non-recurring management services provided to Eastern Refrigerated Express, Inc., an entity partially owned by the CEO and CFO of the Company. These management fees have been classified as other income in the consolidated statement of income for the year ended December 31, 2002. Accounts receivable due from entities affiliated through common

#### **Certain Relationships and Related Transactions (continued)**

ownership was \$174,763 and \$51,000 as of December 31, 2004 and 2003, respectively.

One of the Subsidiaries insurance providers, AIFE, is managed by a director of the Company. The Company has an investment of \$126,461 in AIFE. AIFE provides auto liability insurance to several subsidiaries of the Company as well as other entities related to the Company by common ownership. For the years ended December 31, 2004, 2003 and 2002, cash paid to AIFE for insurance premiums and deductibles was approximately \$5,673,000, 5,373,000, and \$3,923,000, respectively.

The Company exercises no control over the operations of AIFE. As a result, the Company recorded its investment in AIFE under the cost method of accounting for each of the three years ending December 31, 2002, 2003, and 2004. Under the cost method, the investment in AIFE is reflected at its original amount and income is recognized only to the extent of dividends paid by AIFE. There were no dividends declared by AIFE for the years ended December 31, 2002, 2003 and 2004.

If AIFE incurs a net loss, the loss may be allocated to the various policyholders based on each policyholder's premium as a percentage of the total premiums of AIFE for the related period. There has been no such loss assessment for each of the three years ending December 31, 2002, 2003, and 2004. The Subsidiaries currently accounts for the majority of the premiums of AIFE. For fiscal year 2004, the Subsidiaries accounted for approximately 85% of the total premium revenue of AIFE. At December 31, 2003, AIFE had net worth of approximately \$5.6 million, a portion of which is attributable to other policyholders of AIFE.

In addition, the Chief Executive Officer and Chief Financial Officer, as well as a director of the Company, are the sole shareholders of American Inter-Fidelity Corporation (AIFC), which serves as the attorney in fact of AIFE. AIFC is entitled to receive a management fee from AIFE. During 2004, AIFE paid management fees of \$277,387 to AIFC which AIFC then paid as dividends totaling \$277,000 to these officers and directors of the Company who own shares of AIFC. During 2003, AIFE paid management fees \$282,000 to AIFE

then paid as dividends totaling \$282,000 to these officers and directors of the company.

A Subsidiary of the company conducts business with freight companies under the control of a director of the Company. Accounts receivable due from or guaranteed by these companies at December 31, 2004 and 2003 include \$395,000 and 882,000, respectively.

In 2004 the company paid \$24,000 in consulting fees to a director of the company relating to insurance services. In 2003, the Company paid \$8,000 in consulting fees.

The Company has notes payable due to its Chief Executive Officer, Chief Financial Officer, and August Investment Partnership, an entity affiliated through common ownership, as described in Note 8 to the consolidated financial statements.

#### **Item 14. Principal Accounting Fees and Services**

The following table shows the fees paid or accrued (in thousand) by the Company for the audit and other services provided by BDO Seidman

	2004	2003
Audit Fees (1)	\$144,000	\$128,195
Audit-Related Fees(2)	\$ 0	\$ 0
Tax Fees(2)	\$ 0	\$ 0
All Other Fees(3)	<u>\$ 0</u>	<u>\$ 0</u>
Total	<u>\$144,000</u>	<u>\$128,195</u>

(1) Audit fees include fees associated with the annual audit of our consolidated financial statements and reviews of our quarterly reports on Form 10-Q.

(2) There were no audit related services or tax fees.

(3) There were no other services or fees.

The Audit Committee must pre-approve audit-related and non-audit services not prohibited by law to be performed by the Company's independent certified public accountants. There were no audit-related, tax or other fees during 2004.

## PART IV

### Item 15. Exhibits and Financial Statement Schedules

#### (a)(1) Financial Statements:

Reports of Independent Registered Public Accountant Firm	18
Consolidated Balance Sheets as of December 31, 2004 and 2003	19 and 20
Consolidated Statements of Income for the years ended December 31, 2004, 2003, and 2002	21
Consolidated Statements of Shareholders' Equity for the years ended December 31, 2004, 2003, and 2002	22
Consolidated Statements of Cash Flows for the years ended December 31, 2004, 2003, and 2002	23
Notes to Consolidated Financial Statements	25 - 33

#### (a)(2) Financial Statement Schedules:

Schedule of Valuation and Qualifying Accounts	34
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Other schedules are not included because of the absence of the conditions under which they are required or because the required information is included in the consolidated financial statements or notes thereto.

#### (a)(3) List of Exhibits

The following exhibits, numbered in accordance with Item 601 of Regulation S-K, are filed as part of this report:

Exhibit 3.1	Articles of Incorporation of the Company. (incorporated herein by reference to the Company's Proxy Statement of November 9, 1993).
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- Exhibit 3.2 By-Laws of the Company.  
(incorporated herein by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 1994).
- Exhibit 10.11 Loan and Security Agreement with US BANK and Carolina National Transportation Inc., Keystone Lines, Gulflin Transport Inc., Five Star Transport, Inc., Cam Transport, Inc., and US 1 Industries, Inc.
- Exhibit 14.1 US 1 Industries, Inc. Code of Ethics (by reference to the Company's Form 10-K for the year ended December 31, 2003 filed on March 26, 2005).
- Exhibit 21.1 Subsidiaries of the Registrant
- Exhibit 31.1 Rule 13a-14(a)\15d-14a(a) Certifications
- Exhibit 32.1 Section 1350 Certifications

SIGNATURES

Pursuant to the requirements of Sections 13 and 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned there unto duly authorized.

US 1 INDUSTRIES, INC.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Michael E. Kibler  
President & Chief Executive Officer  
(Principal Executive Officer)

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Harold Antonson  
Chief Financial Officer & Treasurer  
(Principal Financial & Accounting Officer)

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

Date: \_\_\_\_\_  
Michael E. Kibler, Director

Date: \_\_\_\_\_  
Robert I. Scissors, Director

Date: \_\_\_\_\_  
Lex L. Venditti, Director

Date: \_\_\_\_\_  
William Sullivan, Director

Date: \_\_\_\_\_

\_\_\_\_\_  
Brad James, Director

Date: \_\_\_\_\_

\_\_\_\_\_  
Harold Antonson, Director

**EXHIBIT 10.11**

**AMENDED AND RESTATED LOAN AGREEMENT**

This **AMENDED AND RESTATED LOAN AGREEMENT**, dated as of March 10, 2005, is between **CAROLINA NATIONAL TRANSPORTATION INC.**, an Indiana corporation (“Carolina”); **GULF LINE TRANSPORT INC.**, an Indiana corporation (“Gulf Line”); **FIVE STAR TRANSPORT, INC.**, an Indiana corporation (“Five Star”); **CAM TRANSPORT, INC.**, an Indiana corporation (“Cam”); **UNITY LOGISTIC SERVICES INC.**, an Indiana corporation (“Unity”); **ERX, INC.**, an Indiana corporation (“ERX”); **FRIENDLY TRANSPORT, INC.**, an Indiana corporation (“Friendly”); **TRANSPORT LEASING, INC.**, an Arkansas corporation (“Transport Leasing”); **HARBOR BRIDGE INTERMODAL, INC.**, an Indiana corporation (“Harbor”); **PATRIOT LOGISTICS, INC.**, an Indiana corporation (“Patriot”); **LIBERTY TRANSPORT, INC.**, an Indiana corporation (“Liberty”); and **KEYSTONE LINES CORPORATION**, a California corporation (“Keystone”), (Carolina, Gulf Line, Five Star, Cam, Unity, ERX, Friendly, Transport Leasing, Harbor, Patriot, Liberty, and Keystone-Indiana are hereinafter each referred to each as a “Borrower Entity”, and collectively as the “Borrower”); **US 1 INDUSTRIES, INC.**, an Indiana corporation (“Guarantor”); and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, formerly known as **FIRSTAR BANK N.A.** (“Lender”).

**PRELIMINARY STATEMENT**

The Borrower has previously entered into a Loan Agreement with Lender dated as of April 18, 2000, and amended as of June 9, 2000, December 7, 2000, March 1, 2001, October 15, 2001, May 1, 2002, August 1, 2002, March 21, 2003, and October 1, 2003 (the April 18, 2000 Loan Agreement, as so amended, is the “Existing Loan Agreement,” and, as amended and restated by this agreement, constitutes the “Loan Agreement”).

Lender has agreed to amend and restate the Existing Loan Agreement to do the following: (1) waive an event of technical default on the part of the Borrower with respect to the financial covenants contained in Section 7.16 thereof; (2) waive an event of technical default on the part of the Borrower with respect to the dissolution of Transport Logistics, LLC, an Arkansas limited liability company (“Transport Logistics”), a borrower under the Existing Loan Agreement, in contravention of Section 6.1 thereof; (3) amend said financial covenants for future periods; (4) reflect the termination of the Equipment Loan, the Guidance Loan and the Second Guidance Loan; and (5) provide for other matters as set forth herein.

NOW, THEREFORE, it is hereby agreed as follows:

**1.**

DEFINITIONS AND PRELIMINARY MATTERS

Definitions.

As used in this Loan Agreement and in the other Loan Instruments, unless otherwise expressly indicated herein or therein, the following terms shall have the following meanings (such meanings to be applicable equally to both the singular and plural forms of the terms defined):

**Accountants:** any independent certified public accounting firm selected by Borrower and satisfactory to Lender.

**Accounting Changes:** as defined in Section 0.

**Accounts:** all presently existing and hereafter arising accounts receivable and other rights to payment owing to Borrower or Guarantor for goods sold or leased or services rendered by Borrower or Guarantor, whether or not earned by performance, and any and all credit insurance, guaranties or security therefor.

**Advance:** any advance of the Revolving Loan (including, without limitation, the payment of any sum pursuant to a Standby Letter of Credit to the beneficiary named therein).

**Affiliate:** any Person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another Person. The term “control” means having the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or equity interests, by contract or otherwise. For the purposes hereof any Person which owns or controls, directly or indirectly, 10% or more of the securities or equity interests, as applicable, whether voting or non-voting, of any other Person shall be deemed to “control” such Person.

**Bankruptcy Code:** the United States Bankruptcy Code and any successor statute thereto, and the rules and regulations issued thereunder, as in effect from time to time.

**Basic Financial Statements:** as defined in subsection 1.5.3.

**Borrower:** means Carolina National Transportation Inc., an Indiana corporation; Gulf Line Transport Inc., an Indiana corporation; Five Star Transport, Inc., an Indiana corporation; Cam Transport, Inc., an Indiana corporation; Unity Logistic Services Inc., an Indiana corporation; ERX, Inc., an Indiana corporation; Friendly Transport, Inc., an Indiana corporation; Transport Leasing, Inc., an Arkansas corporation; Harbor Bridge Intermodal, Inc., an Indiana corporation; Patriot Logistics, Inc., an Indiana corporation; Liberty Transport, Inc., an Indiana corporation; and Keystone Lines Corporation, a California corporation, and such other entities owned or controlled by any of the foregoing or US 1 Industries, Inc., an Indiana corporation, which elect to be designated as a Borrower hereunder in writing and on terms satisfactory to

Lender, and to which Lender agrees in writing to extend credit hereunder and to designate as an additional Borrower.

***Borrower's Obligations:*** (i) any and all Indebtedness due or to become due, whether contingent or otherwise, now existing, or hereafter arising, of Borrower to Lender pursuant to the terms of this Loan Agreement or any other Loan Instrument, and (ii) the performance of the covenants of Borrower contained in the Loan Instruments, including without limitation any amendments thereof.

***Business Day:*** any day other than a Saturday, Sunday or other day on which banks in Chicago, Illinois are required or authorized to close.

***Business Insurance:*** such property, casualty, liability, business interruption and other insurance as Lender from time to time requires Borrower and Guarantor to maintain.

***Capital Expenditures:*** payments that are made or liabilities that are incurred by a Person for the lease, purchase, improvement, construction or use of any Property, the value or cost of which under GAAP is required to be capitalized and appears on such Person's balance sheet in the category of property, plant or equipment, without regard to the manner in which such payments or the instruments pursuant to which they are made are characterized, and shall include, without limitation, payments for or liabilities incurred with respect to the installment purchase of Property and payments under Capitalized Leases.

***Capitalized Lease:*** any lease of Property, the obligations for the rental of which are required to be capitalized in accordance with GAAP.

***Closing:*** the execution and delivery of this Agreement and all ancillary documents and instruments.

***Closing Date:*** the date upon which the Closing occurred, March 10, 2005.

***Code:*** the Internal Revenue Code of 1986, as amended, and any successor statute thereto, and the rules and regulations issued thereunder, as in effect from time to time.

***Collateral:*** the Accounts and all existing and after-acquired Property of Borrower and Guarantor, including without limitation all existing and after-acquired, equipment, inventory and general intangibles, and all proceeds of the foregoing.

***Compliance Certificate:*** a compliance certificate executed by Borrower in the form of Exhibit 1.1(A) attached hereto.

***Corporate Guaranty:*** the unlimited secured corporate guaranty of US 1 Industries, Inc., Borrower's parent company, in form and substance satisfactory to Lender, wherein Guarantor shall guarantee all of Borrower's Obligations.

***Default Rate:*** the Interest Rate, as defined herein, plus 2.0% per annum.

**Default Rate Period:** a period of time commencing on the date that an Event of Default has occurred and ending on the date that such Event of Default is cured or waived.

**Dollars:** lawful currency of the United States.

**EBITDA:** for any period, without duplication, the net income of Borrower or Guarantor for such period:

(a) plus the sum of the following, to the extent deducted in determining such net income for such period:

(i) losses from sales, exchanges and other dispositions of Property not in the ordinary course of business;

(ii) interest paid or accrued on Indebtedness, including, without limitation, interest on Capitalized Leases that is imputed in accordance with GAAP;

(iii) depreciation and amortization of assets during such period;  
and

(iv) charges against net income for taxes;

(b) minus gains from sales, exchanges and other dispositions of Property or other extraordinary gains not in the ordinary course of business.

**Eligible Accounts Receivable:** The total amount of the Accounts from completed transactions after deducting (i) Accounts over 75 days past invoice date; (ii) intercompany Accounts; (iii) foreign Accounts; (iv) Accounts to the extent subject to customer setoffs; (v) Accounts for which the portion of the Account aged 75 days past the invoice date is in excess of 50% of the total indebtedness owed to any of the Borrower Entities by the account debtor; (vi) Accounts for which the account debtor is a Governmental Body, except those for which the account debtor is the government of the United States of America, or any department, commission, board, bureau, agency, public authority or instrumentality thereof and with respect to which all conditions to the pledge of and perfection of a first lien interest in such Accounts under the federal Assignment of Claims Act codified as 41 USC 15 and 31 USC 3727, as amended, on terms satisfactory to Lender, have been satisfied; and (vii) such other reserves as Lender may reasonably deem appropriate.

**Employee Benefit Plan:** any employee benefit plan within the meaning of Section 3(3) of ERISA which (i) is maintained for employees of Borrower or any ERISA Affiliate or (ii) has at any time within the preceding six years been maintained for the employees of Borrower or any current or former ERISA Affiliate.

**Environmental Laws:** any and all federal, state and local laws that relate to or impose liability or standards of conduct concerning public or occupational health and safety or protection of the environment, as now or hereafter in effect and as have been or hereafter may be

amended or reauthorized, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (42 U.S.C. §1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7901 et seq.), the National Environmental Policy Act (42 U.S.C. §4231, et seq.), the Refuse Act (33 U.S.C. §407, et se .), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), and all rules, regulations, codes, ordinances and guidance documents promulgated or published thereunder, and the provisions of any licenses, permits, orders and decrees issued pursuant to any of the foregoing.

**ERISA:** the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, and the rules and regulations issued thereunder, as in effect from time to time.

**ERISA Affiliate:** any Person who is a member of a group which is under common control with Borrower or Guarantor, who together with Borrower or Guarantor is treated as a single employer within the meaning of Section 414(b), (c) and (m) of the Code.

**Event of Default:** any of the Events of Default set forth in Section 8. 1.

**Excess Interest:** as defined in subsection 2.3.3.

**Existing Indebtedness:** all Indebtedness for Borrowed Money owed by Borrower, immediately prior to the Closing, other than Permitted Senior Indebtedness and Permitted Subordinated Indebtedness permitted to exist hereunder on the Closing Date.

**Funding Date:** the date of disbursement of any Advance, which shall be a Business Day.

**GAAP:** generally accepted accounting principles in effect from time to time, which shall include but shall not be limited to the official interpretations thereof by the Financial Accounting Standards Board or any successor thereto.

**Good Funds:** Dollars available in federal funds to Lender at or before 2:00 p.m., Chicago time, on a Business Day.

**Governmental Body:** any foreign, federal, state, municipal or other government, or any department, commission, board, bureau, agency, public authority or instrumentality thereof or any court or arbitrator.

**Hazardous Materials:** any hazardous, toxic, dangerous or other waste, substance or material defined as such in, regulated by or for purposes of any Environmental Law.

**Incipient Default:** any event or condition which, with the giving of notice or the lapse of time, or both, would become an Event of Default.

**Indebtedness:** all liabilities, obligations and reserves, contingent or otherwise, which, in accordance with GAAP, would be reflected as a liability on a balance sheet or would be required

to be disclosed in a financial statement, including, without duplication: (i) Indebtedness for Borrowed Money, (ii) obligations secured by any Lien upon Property, (iii) guaranties, letters of credit and other contingent obligations, and (iv) liabilities in respect of unfunded vested benefits under any Pension Plan or in respect of withdrawal liabilities incurred under ERISA by Borrower, Guarantor or any ERISA Affiliate to any Multi-employer Plan.

***Indebtedness for Borrowed Money:*** without duplication, all Indebtedness (i) in respect of money borrowed, (ii) evidenced by a note, debenture or other like written obligation to pay money (including, without limitation, all of Borrower's Obligations and Permitted Senior Indebtedness), (iii) in respect of rent or hire of Property under Capitalized Leases or for the deferred purchase price of Property, (iv) in respect of obligations under conditional sales or other title retention agreements, and (v) all guaranties of any or all of the foregoing.

***Instruments:*** the Loan Instruments.

***Intellectual Property:*** collectively, all of Borrower's and Guarantor's patents, trademarks, service marks, trade names, copyrights, franchises and all other intellectual property rights with respect thereto.

***Interest Rate:*** with respect to the Revolving Loan, the interest which the Revolving Loan bears, other than during a Default Rate Period, as provided in Section 0.

***Inventory:*** all present and future inventory in which Borrower has any interest, including, without limitation, all goods held for sale, lease or other disposition by Borrower, or to be furnished under a contract of service, and all of Borrower's present and future raw materials, work in process, finished goods, goods consigned to Borrower to the extent of Borrower's interest therein as consignee, materials and supplies of any kind, nature or description which are or might be used in connection with the manufacture, packing, shipping, advertising, selling or furnishing of any such goods and all documents of title or other documents representing the same.

***Landlord:*** a lessor under a Lease.

***Landlord's Consent:*** a landlord's consent in form and substance reasonably satisfactory to Lender.

***Lease:*** any lease of real estate under which Borrower or Guarantor is, or will be, the lessee.

***Leasehold Property:*** any real estate which is the subject of a Lease.

***Lender:*** Firstar Bank N.A., a national banking association, its successors and assigns.

***Lien:*** any mortgage, deed of trust, pledge, assignment, lien, charge, encumbrance or security interest of any kind, or the interest of a vendor or lessor under any conditional sale agreement, Capitalized Lease or other title retention agreement.

***Loan Agreement:*** this Loan Agreement and any amendments or supplements hereto.

***Loan Instruments:***

- (i) Loan Agreement;
- (ii) Revolving Loan Note;
- (iii) Corporate Guaranty;
- (iv) Security Instruments;
- (v) Closing Certificate;
- (vi) Subordination Agreements;
- (vii) Personal Guaranties;
- (viii) Reaffirmations of Personal Guaranties;
- (ix) Corporate Guaranty;
- (x) Reaffirmation of Corporate Guaranty;
- (xi) Standby Letter of Credit;
- (xii) Application and Agreement for Standby Letter of Credit;
- (xiii) Continuing Reimbursement Agreement for Standby Letters of Credit; and
- (xiv) such other instruments and documents as Lender may reasonably require in connection with the transactions contemplated by this Loan Agreement;

as the same may be amended and/or restated from time to time, including without limitation as amended by or pursuant to the Existing Loan Agreement, as amended and restated by this Loan Agreement.

***Material Adverse Effect:*** (i) a material adverse effect upon the business, operations, Property, prospects, profits or financial condition of Borrower or Guarantor or upon the validity, enforceability or priority of the Security Interests or (ii) a material impairment of the ability of Borrower or Guarantor or any other obligor to perform its obligations under any Loan Instrument to which it is a party or of Lender to enforce or collect any of Borrower's or Guarantor's Obligations.

***Maximum Rate:*** as defined in subsection 2.3.3.

***Multiemployer Plan:*** any multiemployer plan as defined pursuant to Section 3(37) of ERISA to which Borrower or Guarantor or any ERISA Affiliate makes, or accrues an obligation to make, contributions, or has made, or been obligated to make, contributions within the preceding six years.

***Net Income:*** shall have the meaning accorded to such term by GAAP.

***Operating Agreement:*** any joint venture agreement, supply agreement, requirements contracts, equipment lease, right-of-entry agreement, access agreement, vendor agreement,

distributing agreement, service agreement, advertising contract, employment agreement, management agreement, collective bargaining agreement or other similar agreement relating to the operation of Borrower's or Guarantor's business.

***Pay-Off Letter***: a pay-off letter from each holder of the Existing Indebtedness addressed to Lender.

***PBGC***: the Pension Benefit Guaranty Corporation or any Governmental Body succeeding to the functions thereof

***Pension Plan***: any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Part 3 of Title I of ERISA, Title IV of ERISA, or Section 412 of the Code and which (i) is maintained for employees of Borrower or Guarantor or any ERISA Affiliate, or (ii) has at any time within the preceding six years been maintained for the employees of Borrower or Guarantor or any of its current or former ERISA Affiliates.

***Permitted Liens***: any of the following Liens:

- (i) the Security Interests;
- (ii) the Permitted Senior Indebtedness Liens;
- (iii) Liens for taxes or assessments and similar charges, which either are (A) not delinquent or (B) being contested diligently and in good faith by appropriate proceedings, and as to which Borrower and Guarantor has set aside reserves on its books in accordance with GAAP;
- (iv) statutory Liens, such as mechanic's, material-man's, repairmen's, warehouseman's, carrier's, landlord's, banks and related rights of set-off, or other like Liens, incurred in good faith in the ordinary course of business, provided that the underlying obligations relating to such Liens are paid in the ordinary course of business, or are being contested diligently and in good faith by appropriate proceedings and as to which Borrower and Guarantor has set aside reserves on its books in accordance with GAAP, or the payment of which obligations are otherwise secured in a manner satisfactory to Lender;
- (v) zoning ordinances, easements, licenses, reservations, provisions, covenants, conditions, waivers or restrictions on the use of Property and other title exceptions, in each case, that are acceptable to Lender;
- (vi) Liens in respect of judgments or awards with respect to which no Event of Default would exist pursuant to subsection 8.1.6;
- (vii) Liens to secure payment of insurance premiums (A) to be paid in accordance with applicable laws in the ordinary course of business relating to payment of worker's compensation, or (B) that are required for the participation in any fund in connection with worker's compensation, unemployment insurance, old-age pensions or other social security programs; and
- (viii) the interest or title of a lessor under the stated terms of any Lease to which a Borrower is a party.

**Permitted Prior Liens:** any of the following Liens:

- (i) the Permitted Senior Indebtedness Liens;
- (ii) the Permitted Liens described in clauses (iii), (iv) and (viii) of the definition of Permitted Liens that are accorded priority to the Security Interests by law; and
- (iii) the Permitted Liens described in clauses (v) and (vii) of the definition of Permitted Liens, subject to the limitations or requirements set forth therein.

**Permitted Senior Indebtedness:** Indebtedness, other than Borrower's Obligations, incurred by Borrower to purchase tangible personal property or Indebtedness incurred by Borrower to lease tangible personal property pursuant to Capitalized Leases, provided that (i) the aggregate amount of such Indebtedness outstanding as of the Closing Date shall not exceed \$50,000, and (ii) prior to the Revolving Loan Maturity Date, the amount of such Indebtedness at any one time outstanding shall not exceed \$50,000 and (iii) no Event of Default exists at the time or will be caused as a result of the incurrence of any Indebtedness described in clause (ii).

**Permitted Senior Indebtedness Liens:** Liens that secure Permitted Senior Indebtedness, provided that (i) each such Lien attaches only to the Property purchased or leased with the proceeds of the Permitted Senior Indebtedness incurred with respect to such Property and (ii) Lender is granted a Lien upon such Property, subordinate only to the Lien granted to the holder of the applicable Permitted Senior Indebtedness.

**Permitted Subordinated Indebtedness:** means the indebtedness of Borrower and Guarantor to Michael Kibler, Harold Antonson, and August Investment Partnership, set forth in Exhibit 5.16 hereto, which the holders of such indebtedness have agreed to subordinate to the senior rights of Lender, pursuant to a Subordination Agreement of even date between Lender and the holders of such indebtedness.

**Person:** any individual, firm, corporation, limited liability company, business enterprise, trust, association, joint venture, partnership, Governmental Body or other entity, whether acting in an individual, fiduciary or other capacity.

**Personal Guarantees:** the individual guarantees of Michael Kibler and Harold Antonson limited to \$1,500,000 per guaranty.

**Personal Guarantors:** Michael Kibler and Harold Antonson, both of whom are directors, officers and principal shareholders of Guarantor and are officers and directors of Borrower.

**Prime Rate:** the per annum rate of interest announced or published publicly from time to time by Lender as its corporate base (or equivalent) rate of interest, which rate shall change automatically without notice and simultaneously with each change in such corporate base rate. The Prime Rate is a reference rate and does not necessarily represent the lowest or prime rate actually charged to any customer by Lender.

**Principal Balance:** the unpaid principal balance of the Revolving Loan.

**Property:** all types of real, personal or mixed property and all types of tangible or intangible property.

**Qualified Depository:** a member bank of the Federal Reserve System having a combined capital and surplus of at least \$100,000,000.

**Real Property:** all interests in real estate owned by Borrower other than the Leasehold Property.

**Revolving Loan:** the revolving loan made by Lender to Borrower pursuant to Section 2.1.

**Revolving Loan Commitment:** \$10,000,000.

**Revolving Loan Maturity Date:** the earlier of (i) October 1, 2005 or (ii) the date on which Borrower's Obligations are accelerated pursuant to the Loan Agreement.

**Revolving Loan Note:** the promissory note executed by Borrower payable to the order of Lender in the amount of the Revolving Loan Commitment, dated as of April 18, 2000, and as further amended and restated as of June 9, 2000, December 7, 2000, October 15, 2001, May 1, 2002, August 1, 2002, March 21, 2003, and October 1, 2003.

**Securities Act:** the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder, as in effect from time to time.

**Security Agreement:** the security agreements executed by Borrower and Guarantor in favor of Lender.

**Security Instruments:** collectively, the Security Agreement and any other document now or hereafter executed by Borrower or Guarantor which purports to create a Lien on the Property of Borrower or Guarantor in favor of Lender.

**Security Interests:** the Liens in the Collateral granted to Lender pursuant to the Security Instruments.

**Solvency Certificate:** a solvency certificate executed by Borrower to Lender.

**Standby Letters of Credit:** standby letters of credit issued by Lender at the request of Borrower, from time to time, in a form acceptable to Lender, in an aggregate face amount of up to the lesser of \$850,000 or the available portion of the Revolving Loan Commitment, to be issued in favor of the beneficiary named therein, on the terms and conditions set forth in the Loan Agreement.

**Stated Rate:** as defined in subsection 2.3.3.

**Subordination Agreement:** means a subordination agreement of even date between Lender and the holders of the Permitted Subordinated Indebtedness, wherein the holders of such

junior and subordinate indebtedness have agreed to subordinate their rights and claims to the senior rights of Lender.

***Tangible Net Worth:*** at any date, means Guarantor's net worth at such date after subtracting therefrom the aggregate amount at such date of any intangible assets of Borrower, including, without limitation, prepaid amounts, goodwill, franchises, licenses, patents, trademarks, trade names, copyrights, service marks and brand names.

***Termination Event:*** (i) a "Reportable Event" described in Section 4043 of ERISA and the regulations issued thereunder; or (ii) the withdrawal of Borrower, Guarantor or any ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2); or (iii) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination under Section 4041 of ERISA; or (iv) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC; or (v) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; or (vi) the partial or complete withdrawal of Borrower, Guarantor or any ERISA Affiliate from a Multiemployer Plan; or (vii) the imposition of a lien pursuant to Section 412 of the Code or Section 302 of ERISA; or (viii) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA; or (ix) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA.

***Total Liabilities:*** any date means the aggregate amount of all Indebtedness of Borrower at such date.

#### Time Periods.

In this Loan Agreement and the other Loan Instruments, in the computation of periods of time from a specified date to a later specified date, (i) the word "from" means "from and including," (ii) the words "to" and "until" each mean "to, but excluding" and (iii) the words "through," "end of" and "expiration" each mean "through and including." Unless otherwise specified, all references in this Loan Agreement and the other Loan Instruments to (i) a "month" shall be deemed to refer to a calendar month, (ii) a "quarter" shall be deemed to refer to a calendar quarter and (iii) a "year" shall be deemed to refer to a calendar year.

#### Accounting Terms and Determinations.

All accounting terms not specifically defined herein shall be construed, all accounting determinations hereunder shall be made and all financial statements required to be delivered pursuant hereto shall be prepared in accordance with GAAP as in effect at the time of such interpretation, determination or preparation, as applicable. In the event that any Accounting Changes occur and such changes result in a change in the method of calculation of financial covenants, standards or terms contained in this Loan Agreement, then Borrower and Lender agree to enter into negotiations to amend such provisions of this Loan Agreement so as to reflect

such Accounting Changes with the desired result that the criteria for evaluating the financial condition of Borrower shall be the same after such Accounting Changes as if such Accounting Changes had not been made. For purposes hereof, "Accounting Changes" shall mean (i) changes in GAAP required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board (or any successor thereto) or other appropriate authoritative body and (ii) changes in accounting principles as approved by the Accountants.

#### References.

All references in this Loan Agreement to "Article," "Section," "subsection," "subparagraph," "clause" or "Exhibit," unless otherwise indicated, shall be deemed to refer to an Article, Section, subsection, subparagraph, clause or Exhibit, as applicable, of this Loan Agreement.

#### Lender's Discretion.

Whenever the terms "satisfactory to Lender," "determined by Lender," "acceptable to Lender," "Lender shall elect," "Lender shall request," "at the option or election of Lender," or similar terms are used in the Loan Instruments, except as otherwise specifically provided therein, such terms shall mean satisfactory to, at the election or option of, determined by, acceptable to or requested by Lender, in its sole and unlimited discretion.

#### Borrower's or Guarantor's Knowledge.

Any statements, representations or warranties that are based upon the best knowledge of Borrower or Guarantor or an officer thereof shall be deemed to have been made after due inquiry by Borrower, Guarantor or such officer, as applicable, with respect to the matter in question.

#### **1.7** Continued Effectiveness of Previously-Executed Loan Instruments.

The Borrower Entities and Guarantor hereby acknowledge that they have previously entered into and executed Security Agreements dated as of April 18, 2000 (in the case of Carolina, Gulf Line, Five Star, and Guarantor), as of December 7, 2000 (in the case of Cam), as of October 15, 2001 (in the case of Unity, ERX, Friendly, and Transport Leasing), as of May 1, 2002 (in the case of Harbor), as of March 21, 2003 (in the case of Patriot and Liberty), (collectively, the "Existing Security Agreements"), with Lender, by which certain assets of the Borrower and the Guarantor were pledged to secure Borrower's Obligations (as that term is defined in the Loan Agreement). The Borrower and the Guarantor do hereby acknowledge that Borrower's Obligations, as that term is used in the Loan Agreement and the Existing Security Agreements, means Borrower's Obligations under the Loan Agreement, and includes, without limitation, the obligation to repay as and when due any and all amounts advanced by Lender to the Borrower (including borrowers other than the existing Borrower Entities), or any of them, together with interest thereon, as provided in the Revolving Loan Note, and do hereby reaffirm their obligations thereunder.

#### **1.8** Waiver of Certain Defaults.

The Existing Loan Agreement requires that Borrower not permit the ratio of Unsubordinated Indebtedness to EBITDA to exceed 3.0 to 1 during any rolling four (4) quarter period. During the quarter ended June 30, 2004, Borrower allowed said ratio to exceed 3.0 to 1. The Existing Loan Agreement also provides that Borrower may not permit any of its constituent entities to dissolve so long as any of Borrower's Obligations and/or obligations of the Guarantor remain outstanding. Prior to the date hereof, Transport Logistics was dissolved. Notwithstanding the terms of the Existing Loan Agreement, Lender hereby waives the foregoing Events of Default, without waiving its right strictly to enforce the terms of the Loan Documents in the future.

### **1.9 Deliveries of Borrower, Guarantor and Personal Guarantors.**

Simultaneously with the execution hereof, Borrower, Guarantor and each Personal Guarantor, as the case may be, shall deliver the following to Lender, duly executed by the parties thereto other than Lender:

- i) Reaffirmations of Personal Guaranties of Michael Kibler and Harold Antonson, in the forms attached hereto as Exhibits A-1 and A-2;
- ii) Reaffirmation of Corporate Guaranty of Guarantor, in the form attached hereto as Exhibit B;
- iii) Acknowledgements of the holders of Subordinated Indebtedness of, 1) the execution of this Amended and Restated Loan Agreement; 2) the continued effectiveness of those certain Subordination Agreements by and between Lender and, a) Harold Antonson and Michael Kibler, dated as of April 18, 2000, as amended pursuant to that certain Amendment to Subordination Agreement dated as of August 1, 2002, and b) August Investment Partnership, as amended and restated pursuant to that certain Amended and Restated Subordination Agreement dated as of August 1, 2002 (collectively, as so amended, the "Subordination Agreements"), in the forms attached hereto as Exhibits C-1 and C-2;
- iv) Certified resolutions for Guarantor and each Borrower Entity;
- v) Evidence of good standing for Guarantor and each Borrower Entity; and
- vi) Opinion letters from Borrower's counsel, Troutman Sanders, LLP, in a form reasonably satisfactory to Lender's counsel regarding the Borrower's and the Guarantor's authorization, execution and delivery of this Loan Agreement, dated as of the date hereof (excluding Keystone), and the documents referenced herein, and the incorporation or organization, as the case may be, and the good standing, of each Borrower and of the Guarantor as of the date hereof.

## **2.**

### **LOANS AND TERMS OF PAYMENT**

#### **1.2 Revolving Loan.**

##### **1.2.1 Amount and Disbursement.**

(a) Advances of the Revolving Loan and Issuance of Standby Letters of Credit. Upon the terms and subject to the conditions herein set forth, Lender

agrees to make Advances of the Revolving Loan to Borrower from time to time from the Closing Date to the Revolving Loan Maturity Date in an aggregate amount outstanding at any one time not in excess of the Revolving Loan Commitment then in effect. Lender agrees to issue Standby Letters of Credit under the Revolving Loan upon satisfaction of the conditions set forth in subsection 2.1.1(b) below. The issuance of a Standby Letter of Credit shall immediately reduce the amount of the Revolving Loan Commitment available for Advances by the face amount of that Standby Letter of Credit. A draw against a Standby Letter of Credit shall constitute an Advance of the Revolving Loan, and any Indebtedness with respect to a Standby Letter of Credit or the reimbursement obligations pursuant thereto shall be evidenced by the Note and secured by the Security Agreement and the other Loan Documents;

(b) Conditions to Issuance of a Standby Letter of Credit. As preconditions to the issuance of a Standby Letter of Credit, Lender shall require the following:

- (i) The conditions attendant to an Advance of the Revolving Loan shall be satisfied; and
- (ii) One or more Borrower Entities shall execute and deliver Lender's Application and Agreement for Standby Letter of Credit and Lender's Continuing Reimbursement Agreement for Standby Letters of Credit, on the forms provided by and acceptable to Lender, as said documents may be amended or replaced from time to time, together with such other documentation as Lender may request in support thereof (collectively, the "Letter of Credit Documents"), at least five (5) Business Days prior to the proposed date of issuance of a Standby Letter of Credit. In the event of any conflict between the terms of this Loan Agreement and the Letter of Credit Documents, the former shall control;

(c) Payments. In determining whether to pay under a Standby Letter of Credit, Lender shall not have any obligation to the Borrower or Guarantor other than to confirm that any documents required to be delivered under such Standby Letter of Credit appear to have been delivered and appear to comply on their face with the requirements of such Standby Letter of Credit. Any action taken or omitted by Lender under or in connection with any Standby Letter of Credit, if taken or omitted in the absence of gross negligence and willful misconduct, shall not impose upon Lender any liability to the Borrower or Guarantor and shall not reduce or impair Borrower's reimbursement obligations thereunder;

(d) Term and Renewals. A Standby Letter of Credit may be issued for a term of up to one year, and, if Lender thereafter agrees, may be renewed for such additional periods as Lender may agree to, provided however, that the expiration date of a Standby Letter of Credit may not extend beyond the Revolving Loan Maturity Date;

(e) Fees. A letter of credit fee in the amount of two percent (2%) of the face value of each Standby Letter of Credit issued hereunder shall be paid to

Lender upon the date of issuance, and upon each anniversary thereof, for so long as that Standby Letter of Credit remains outstanding;

(f) Obligations Absolute. The Borrower's obligations to repay any Indebtedness arising from a draw on a Standby Letter of Credit shall be absolute and unconditional, irrespective of any setoff, counterclaim or defense to payment which any Borrower may have or have had against Lender that Lender shall not be responsible for, and the Borrower's obligation to reimburse sums paid under a Standby Letter of Credit shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even if such documents should in fact prove to be in any respect invalid or fraudulent, or any dispute between or among any Borrower, the beneficiaries of the Standby Letter of Credit, and/or Lender. Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with a Standby Letter of Credit. The Borrower agrees that any action taken or omitted by Lender under or in connection with a Standby Letter of Credit and the related drafts and documents, if done without gross negligence or willful misconduct, shall be binding upon the Borrower and shall incur any liability to the Borrower on the part of Lender;

(g) Actions of Lender. The Lender shall be entitled to rely, and shall be fully protected in relying, upon a Standby Letter of Credit and any draft, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, teletype, telex or teletype message, statement, order or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon advice and statements of legal counsel, independent accountants and other advisors selected by the Lender;

(h) INDEMNIFICATION. THE BORROWER ENTITIES, JOINTLY AND SEVERALLY, SHALL INDEMNIFY AND HOLD HARMLESS LENDER AND ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS AND DAMAGES, LOSSES LIABILITIES, COSTS OR EXPENSES WHICH LENDER MAY INCUR (OR WHICH MAY BE CLAIMED AGAINST LENDER BY ANY PERSON WHATSOEVER) BY REASON OF OR IN CONNECTION WITH THE ISSUANCE, EXECUTION AND DELIVERY OR TRANSFER OF OR PAYMENT OR FAILURE TO PAY UNDER A STANDBY LETTER OF CREDIT OR ANY ACTUAL OR PROPOSED USE OF THE STANDBY LETTER OF CREDIT, *provided* that the Borrowers shall not be required to indemnify Lender for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by, (y) the willful misconduct or gross negligence of Lender in determining whether a request presented under a Standby Letter of Credit complied with the terms thereof, or (z) Lender's failure to pay under a Standby Letter of Credit after the presentation to it of a request strictly complying with the terms and conditions thereof. Nothing in this Section 2.1.1 is

intended to limit the rights or obligations of the Borrower under any other provision of this Loan Agreement;

(i) Excessive Borrower's Obligations. If at any time, however, Borrower's Obligations exceed the Revolving Loan Commitment then in effect, all of such excess nevertheless shall constitute a part of Borrower's Obligations and shall be secured by the Security Interests. Notwithstanding the references in this Loan Agreement and the Loan Instruments to the various Borrower Entities as a singular Borrower, each of them acknowledges and agrees that they are and shall remain jointly and severally liable for all of Borrower's Obligations.

#### **1.2.2** Revolving Loan Note.

The Revolving Loan shall be evidenced by the Revolving Loan Note.

#### **1.2.3** Reborrowing.

Subject to the conditions set forth in this Section 2.1, Borrower from time to time may reborrow all or any portion of any Advance of the Revolving Loan which is repaid.

#### **1.2.4** Conditions of Advances of the Revolving Loan.

The obligation of Lender to disburse any Advance of the Revolving Loan is subject to the satisfaction of the following conditions precedent:

(a) no Event of Default or Incipient Default shall exist or would be created by the making of any such Advance;

(b) each such Advance shall be in a minimum amount of \$1,000 and integral multiples of \$1,000 in excess of that amount;

(c) Lender shall have received, no later than 2:00 p.m., Chicago time, on the applicable Funding Date, a Notice of Borrowing from Borrower in the form of Exhibit 2.1.4 with respect to such Advance;

(d) on the applicable Funding Date, each of Borrower's and Guarantor's representations and warranties set forth in the Loan Instruments shall be true and correct in all material respects when made and at and as of the time of the Funding Date, except to the extent that any such representations and warranties expressly relate to an earlier date; and

(e) availability shall be limited to Lender's advance of funds not exceeding seventy-five percent (75%) of Borrower's Eligible Accounts Receivable.

#### **2.1.A** Equipment Loan.

As of the date of this Loan Agreement, no amounts are due and owing to Lender under the Equipment Loan. Borrower and Lender hereby agree to terminate the Equipment Loan (as

that term is defined in the Existing Loan Agreement), and Borrower hereby acknowledges that no further borrowing shall be available thereunder. Lender hereby agrees to cancel the Equipment Loan Note (as that term is defined in the Existing Loan Agreement) as of the date hereof and return it to the Borrower, and releases Guarantor and each Personal Guarantor of all obligations under the Guaranty with respect to the Equipment Loan.

**2.1.B** Guidance Loan.

As of the date of this Loan Agreement, no amounts are due and owing to Lender under the Guidance Loan (as that term is defined in the Existing Loan Agreement). Borrower and Lender hereby agree to terminate the Guidance Loan, and Borrower hereby acknowledges that no further borrowing shall be available thereunder. Lender hereby agrees to cancel the Guidance Loan Note (as that term is defined in the Existing Loan Agreement) as of the date hereof and return it to the Borrower, and hereby releases Guarantor and each Personal Guarantor of all obligations under the Guaranty with respect to the Guidance Loan.

**2.1.C** Second Guidance Loan.

As of the date of this Loan Agreement, no amounts are due and owing to Lender under the Second Guidance Loan (as that term is defined in the Existing Loan Agreement). Borrower and Lender hereby agree to terminate the Second Guidance Loan, and Borrower hereby acknowledges that no further borrowing shall be available thereunder. Lender hereby agrees to cancel the Second Guidance Loan Note (as that term is defined in the Existing Loan Agreement) as of the date hereof and return it to the Borrower, and releases Guarantor and each Personal Guarantor of all obligations under the Guaranty with respect to the Second Guidance Loan.

Use of Proceeds of the Revolving Loan.

The proceeds of the Revolving Loan shall be used for working capital and general corporate purposes.

Interest.

**2.3.1** Interest Rate. The Principal Balance of the Revolving Loan shall bear interest from the date hereof at a rate determined as follows:

If the ratio of Unsubordinated Indebtedness to EBITDA is:	The interest rate charged effective the first day of the next quarter shall be equal to:
> 2.51 to 1	The Prime Rate in effect from time to time
> 2.00 to 1, ≤ 2.51 to 1	The Prime Rate in effect from time to time, less 0.25% per annum
≤ 2.00 to 1	The Prime Rate in effect from time to time, less 0.50% per annum

provided, however, that during a Default Rate Period, Borrower's Obligations shall bear interest at the applicable Default Rate. For the purposes of this Section 2.3.1, EBITDA shall be determined based on a rolling four (4) quarter average.

### **2.3.2 Interest Computation.**

Interest shall be computed on the basis of a year consisting of 360 days and charged for the actual number of days during the period for which interest is being charged. In computing interest, the Funding Date shall be included and the date of payment shall be excluded.

### **2.3.3 Maximum Interest.**

Notwithstanding any provision to the contrary contained herein or in any other Loan Instrument, Lender shall not collect a rate of interest on any obligation or liability due and owing by Borrower to Lender in excess of the maximum contract rate of interest permitted by applicable law ("Excess Interest"). If any Excess Interest is provided for or determined by a court of competent jurisdiction to have been provided for in this Loan Agreement or any other Loan Instrument, then in such event (i) Borrower shall not be obligated to pay such Excess Interest, (ii) any Excess Interest collected by Lender shall be refunded to the payor thereof, (iii) the interest rates provided for herein (collectively the "Stated Rate") shall be automatically reduced to the maximum rate allowed from time to time under applicable law (the "Maximum Rate") and this Loan Agreement and the other Loan Instruments, as applicable, shall be deemed to have been, and shall be, modified to reflect such reduction, and (iv) Borrower shall not have any action against Lender for any damages arising out of the payment or collection of such Excess Interest; provided, however, that if at any time thereafter the Stated Rate is less than the Maximum Rate, Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Rate until such time as the total interest received by Lender is equal to the total interest which Lender would have received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again exceeds the Maximum Rate, in which event the provisions contained in this subsection 2.3.3 again shall apply.

### **2.3.4 Increased Costs.**

If, after the Closing Date, either (i) any change in or in the interpretation of any law or regulation is introduced (other than changes in taxation of the net income of Lender), including, without limitation, with respect to reserve requirements applicable to Lender, (ii) Lender complies with any future guideline or request from any central bank or other Governmental Body proposed or promulgated after the Closing Date or (iii) Lender determines that the adoption of any applicable law, rule or regulation (other than changes in taxation of the net income of Lender) regarding capital adequacy or any change therein, or any change in the interpretation or administration thereof by any Governmental Body, central bank or comparable agency charged with the interpretation or administration thereof announced after the Closing Date has or would have the effect described below, or Lender complies with any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Body, central bank or comparable agency announced after the Closing Date and in case of any event set forth in this clause (iii), such adoption, change or compliance has or would have the direct or indirect effect of reducing the rate of return on any of Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy) by an amount deemed by Lender to be material, and any of the foregoing events described in clauses (i), (ii) or (iii) increases the cost to Lender of (A) funding or maintaining the Revolving Loan or the Revolving Loan Commitment, or (B) issuing, causing the issuance of making or maintaining any

Letter of Credit, or reduces the amount receivable in respect thereof by Lender, then Borrower shall upon demand by Lender at any time within 180 days after the date on which an officer of Lender responsible for overseeing this Loan Agreement knows or has reason to know of its right to additional compensation under this subsection 2.3.4, pay to Lender additional amounts sufficient to reimburse Lender against such increase in cost or reduction in amount receivable; provided, however, such entity shall only be entitled to additional compensation for any such costs incurred from and after the date that is 30 days prior to the date Borrower receive such demand. A certificate as to the amount of such increased cost, and setting forth in reasonable detail the calculation thereof, shall be submitted to Borrower by Lender, and shall be conclusive absent manifest error. Lender will promptly notify Borrower of any event of which it has knowledge that would entitle Lender to additional compensation under this subsection 2.3.4. Lender shall not request any additional compensation under this subsection 2.3.4 unless it is generally making similar requests of other borrowers similarly situated, and Lender agrees to use a reasonable basis for calculating amounts allocable to the Revolving Loan Commitment.

### Principal and Interest Payments.

#### **2.4.1** Interest.

Interest on the Revolving Loan shall be payable monthly in arrears on the first Business Day of each month beginning with May 1, 2000.

#### **2.4.2** Principal.

The Principal Balance of the Revolving Loan, together with all other sums due to Lender pursuant to the terms of the Loan Instruments, shall be due and payable in full on the Revolving Loan Maturity Date.

### Mandatory Prepayments of the Revolving Loan.

If at any time or for any reason, Borrower's Obligations exceed the Revolving Loan Commitment or, if for any reason, Borrower's Obligations exceeds the availability requirements set forth in Section 2.1.4(e) hereof (any such excess being referred to herein as an "Overadvance"), Borrowers shall immediately pay to Lender, in Good Funds, the amount of such Overadvance.

### Payments after Event of Default.

All payments received by Lender during the existence of an Event of Default shall be applied in accordance with Section 8.4.

### Method of Payment.

All payments to be made pursuant to the Loan Instruments by Borrower to Lender shall be made by (i) direct debit from Borrower's operating account; or (ii) wire transfer of Good Funds to Lender.

**3.**

SECURITY

Borrower's Obligations shall be secured by a Lien upon all of the Collateral, which Lien at all times shall be superior and prior to all other Liens, except Permitted Prior Liens.

**4.**

CONDITIONS TO OBLIGATIONS OF PARTIES

The obligation of the parties to this Loan Agreement shall continue to be governed by the Existing Loan Agreement pending satisfaction or waiver of all of the following conditions in a manner, form and substance satisfactory to Lender:

Delivery of Documents.

The deliveries set forth in Section 1.9 hereof shall have been delivered to Lender, each duly authorized and executed, where applicable, in form and substance satisfactory to Lender.

Performance; No Default.

Borrower and Guarantor shall have performed and complied with all agreements and conditions contained in the Loan Instruments to be performed by or complied with by such Person prior through the date hereof, and no Event of Default shall exist or result from the execution of this Loan Agreement.

**5.**

REPRESENTATIONS AND WARRANTIES

Borrower and Guarantor represent and warrant to Lender as follows:

Existence and Power.

Borrower and Guarantor are business corporations, or limited liability companies, as the case may be, duly formed and validly existing under the laws of the jurisdiction of their respective formation. Borrower and Guarantor are in good standing under the laws of each other jurisdiction in which the failure to be in good standing could have a Material Adverse Effect. Borrower and Guarantor have all requisite power and authority to own their Property and to carry on their business as has been conducted through the date hereof and as proposed to be conducted by Borrower and Guarantor following the date hereof.

Authority.

Borrower and Guarantor have full power and authority to enter into, execute, deliver and carry out the terms of the Loan Instruments and to incur the obligations provided for therein, all of which have been duly authorized by all proper and necessary action and, are not prohibited by the organizational instruments of Borrower and Guarantor.

## Binding Agreements.

This Loan Agreement and the other Loan Instruments, when executed and delivered, will constitute the valid and legally binding obligations of Borrower and Guarantor, enforceable against Borrower and Guarantor in accordance with its respective terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect affecting the enforcement of creditors' rights generally and (ii) equitable principles (whether or not any action to enforce such document is brought at law or in equity).

## Business and Property of Borrower and Guarantor.

### **1.2.5 Business and Property.**

Borrower and Guarantor (i) own all Property necessary to conduct their business as presently conducted and as has been conducted prior to the date hereof and (ii) have not engaged in and do not propose to engage in any business activity other than the business in which they are presently engaged.

### **1.2.6 Operating Agreements.**

All Operating Agreements are in full force and effect and no event has occurred which could result in the cancellation or termination of any such Operating Agreement or the imposition thereunder of any liability upon Borrower or Guarantor which could have a Material Adverse Effect.

### **1.2.7 Facility Sites.**

There is set forth in Schedule 5.4.3 the locations of Borrower's and Guarantor's (i) chief executive office, (ii) Property and (iii) books and records.

### **1.2.8 Leases.**

There is set forth in Schedule 5.4.4 a list of all Leases, together with a complete and accurate address and legal description of each parcel of Leasehold Property subject to such Leases. Each Lease is in full force and effect, there has been no default in the performance of any of its terms or conditions by Borrower or Guarantor or, to the best knowledge of Borrower and Guarantor, any other party thereto, and, to the best knowledge of Borrower and Guarantor, no claims of default have been asserted with respect thereto.

### **1.2.9 Real Property.**

There is set forth in Schedule 5.4.5 a complete and accurate address and legal description of each parcel of Real Property. The present and contemplated use of the Leasehold Property and the Real Property is in compliance with all applicable zoning ordinances and regulations and other laws and regulations, the violation of which could have a Material Adverse Effect.

### **1.2.10 Operation and Maintenance of Equipment.**

No equipment owned or operated will be owned or operated by Borrower which is necessary for the operation of its business has been used, operated or maintained in a manner which now or hereafter could result in the cancellation or termination of the right of Borrower to

use or make use of the same or which could be expected to result in any material liability of Borrower for damages in connection therewith. All of the equipment and other tangible personal property owned by Borrower upon the date hereof and necessary to the operation of Borrower's business is, in all material respects, in good operating condition and repair (subject to normal wear and tear) and has been used, operated and maintained in substantial compliance with all applicable laws, rules and regulations.

#### **1.2.11 Existing Indebtedness.**

There is set forth in Schedule 5.4.7 a complete description of the Existing Indebtedness.

#### **Title to Property; Liens.**

Borrower has (i) good and marketable title to all of its Property, except the portion thereof consisting of a leasehold estate and (ii) a valid leasehold estate in each portion of its Property which consists of a leasehold estate. All of such Property is free and clear of all Liens, except Permitted Liens. Upon the proper filing with the appropriate Governmental Bodies of appropriate Uniform Commercial Code financing statements, the applicable Loan Instruments will create valid and perfected first Liens in the Collateral, subject only to Permitted Prior Liens.

#### **Financial Statements.**

Borrower and Guarantor have delivered to Lender the financial statements described in Schedule 5.6. To the best of Borrower's and Guarantor's knowledge, such financial statements present fairly in all material respects the results of their operations for the periods covered thereby and their financial condition as of the dates indicated therein. All of such financial statements have been prepared in conformity with GAAP consistently applied. Since the date of the most recent financial statement, there has been no change which has had a Material Adverse Effect.

#### **Litigation.**

There is set forth in Schedule 5.7 a description of all actions, suits, arbitration proceedings and claims pending or, to the best knowledge of Borrower and Guarantor, threatened against Borrower and Guarantor, at law or in equity or before any Governmental Body on the date hereof. There are no actions, suits, arbitration proceedings or claims pending, or to the best knowledge of Borrower and Guarantor, threatened against Borrower and Guarantor, at law or in equity or before any Governmental Body, including the matters set forth in such Schedule 5.7, which could reasonably be expected to have a Material Adverse Effect.

#### **Defaults in Other Agreements; Consents; Conflicting Agreements.**

Borrower and Guarantor are not in default under any agreement to which they are a party or by which they or any of their Property is bound, the effect of which default could reasonably be expected to have a Material Adverse Effect. No authorization, consent, approval or other action by, and no notice to or filing with, any Governmental Body or any other Person which has not already been obtained, taken or filed, as applicable, is required (i) for the due execution, delivery or performance by Borrower and Guarantor of any of the Instruments to which

Borrower and Guarantor are a party or (ii) as a condition to the validity or enforceability of any of the Instruments to which Borrower and Guarantor are a party or any of the transactions contemplated thereby or the priority of the Security Interests, except for certain filings to establish and perfect the Security Interests. No provision of any mortgage, indenture, contract, agreement, statute, rule, regulation, judgment, decree or order binding on Borrower or Guarantor or affecting their Property conflicts with, or requires any consent which has not already been obtained under, or would in any way prevent the execution, delivery or performance of the terms of any of the Instruments or affect the validity or priority of the Security Interests. The execution, delivery and performance of the terms of the Instruments will not constitute a default under, or result in the creation or imposition of, or obligation to create, any Lien upon the Property of Borrower or Guarantor pursuant to the terms of any such mortgage, indenture, contract or agreement.

#### Taxes.

Borrower and Guarantor have filed all tax returns required to be filed, and have paid, or made adequate provision for the payment of, all taxes shown to be due and payable on such returns or in any assessments made against it, and no tax liens have been filed and, to the best knowledge of Borrower and Guarantor, no claims are being asserted in respect of such taxes which are required by GAAP to be reflected in the financial statements of Borrower and Guarantor and are not so reflected therein. The charges, accruals and reserves on the books of Borrower and Guarantor with respect to all federal, state, local and other taxes are considered by the management of Borrower and Guarantor to be adequate, and Borrower or Guarantor do not know of any unpaid assessment which is or might be due and payable by Borrower and Guarantor or creates a Lien against any of Borrower's and Guarantor's Property, except such assessments as are being contested in good faith and by appropriate proceedings diligently conducted, and for which adequate reserves have been set aside in accordance with GAAP. None of the tax returns of Borrower and Guarantor are under audit.

#### Compliance with Applicable Laws.

Borrower is not in default in respect of any judgment, order, writ, injunction, decree or decision of any Governmental Body, which default could have a Material Adverse Effect. Borrower is in compliance in all material respects with all applicable statutes and regulations, including, without limitation, all Environmental Laws, ERISA and all laws and regulations relating to unfair labor practices, equal employment opportunity and employee safety, of all Governmental Bodies. No material condemnation, eminent domain or expropriation has been commenced or, to the best knowledge of Borrower, threatened against the Property which Borrower owns as of the date hereof.

#### Patents, Trademarks, Franchises and Agreements.

There is set forth in Schedule 5.11 a complete and accurate list of all of the Intellectual Property. Borrower owns, possesses or has the right to use such Intellectual Property (i) which is necessary for the conduct of the business proposed to be conducted by Borrower on and after the date hereof and (ii) for which the failure to own, possess or have the right to use could have a

Material Adverse Effect, in each case, without any known conflict with the rights of others and free of any Liens other than the Security Interests.

#### Regulatory Matters.

Borrower has duly and timely filed all reports and other filings which are required to be filed by Borrower under any applicable law, rule or regulation of any Governmental Body, the non-filing of which could have a Material Adverse Effect, and is in compliance with all such laws, rules and regulations, the noncompliance with which could have a Material Adverse Effect.

#### Environmental Matters.

Borrower is in compliance in all material respects with all applicable Environmental Laws and no portion of any of the Leasehold Property or the Real Property has been used as a landfill. There currently are not any known Hazardous Materials generated, manufactured, released, stored, buried or deposited over, beneath, in or on (or used in the construction and/or renovation of) the Real Property or Leasehold Property in violation of applicable Environmental Laws.

#### Application of Certain Laws and Regulations.

Borrower and Guarantor are not and no Affiliate of Borrower or Guarantor is:

##### **1.2.12 Investment Company Act.**

An “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

##### **1.2.13 Holding Company.**

A “holding company,” or a “subsidiary company” of a “holding company,” or an “affiliate” of a “holding company” or of a “subsidiary company” of a “holding company,” as such terms are defined in the Public Utility Holding Company Act of 1935, as amended.

##### **1.2.14 Foreign or Enemy Status.**

(i) An “enemy” or an “ally of an enemy” within the meaning of Section 2 of the Trading with the Enemy Act, (ii) a “national” of a foreign country designated in Executive Order No. 8389, as amended, or of any “designated enemy country” as defined in Executive Order No. 9095, as amended, of the President of the United States of America, in each case within the meaning of such Executive Orders, as amended, or of any regulation issued thereunder, (iii) a “national of any designated foreign country” within the meaning of the Foreign Assets Control Regulations or the Cuban Assets Control Regulations of the United States of America (Code of Federal Regulations, Title 31, Chapter V, Part 515, Subpart B, as amended) or (iv) an alien or a representative of any alien or foreign government within the meaning of Section 310 of Title 47 of the United States Code.

##### **1.2.15 Regulations as to Borrowing.**

Subject to any statute or regulation which regulates the incurrence of any Indebtedness for Borrowed Money, including, without limitation, statutes or regulations relative to common or

interstate carriers or to the sale of electricity, gas, steam, water, telephone, telegraph or other public utility services.

### Margin Regulations.

None of the transactions contemplated by this Loan Agreement or any of the other Instruments, including the use of the proceeds of the Loans, will violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including, without limitation, Regulations G, T, U and X, and Borrower does not own or intend to carry or purchase any “margin security” within the meaning of such Regulation U or G.

### Other Indebtedness.

Upon the execution of this Loan Agreement, there will be no Indebtedness for Borrowed Money owed by Borrower to any Person, except (i) Borrower's Obligations, and (ii) Permitted Senior Indebtedness and Permitted Subordinated Indebtedness permitted to exist as of the Closing Date pursuant to this Loan Agreement. All such Permitted Subordinated Indebtedness is listed and described in Schedule 5.16 hereto.

### No Misrepresentation.

Neither this Loan Agreement nor any other Loan Instrument, certificate, information or report furnished or to be furnished by or on behalf of Borrower or Guarantor to Lender in connection with any of the transactions contemplated hereby or thereby, contains or will contain a misstatement of material fact, or omits or will omit to state a material fact required to be stated in order to make the statements contained herein or therein, taken as a whole, not misleading in the light of the circumstances under which such statements were made. There is no fact, other than information known to the public generally, known to Borrower and Guarantor after diligent inquiry, that could have a Material Adverse Effect that has not expressly been disclosed to Lender in writing.

### Employee Benefit Plans.

#### **1.2.16** No Other Plans.

Neither Borrower, Guarantor nor any ERISA Affiliate maintains or contributes to, or has any obligation under, any Employee Benefit Plan other than those identified on Schedule 5.18.1. Borrower has provided Lender accurate and complete copies of all contracts, agreements and documents described on Schedule 5.18.1.

#### **1.2.17** ERISA and Code Compliance and Liability.

Borrower, Guarantor and each ERISA Affiliate are in compliance with all applicable provisions of ERISA and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans except where failure to comply would not result in a material liability to Borrower or Guarantor and except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified, and each trust related to such plan has been

determined to be exempt under Section 401(a) of the Code. No material liability has been incurred by Borrower or Guarantor or any ERISA Affiliate which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan.

### **1.2.18 Funding.**

No Pension Plan has been terminated, nor has any accumulated funding deficiency (as defined in Section 412 of the Code) been insured (without regard to any waiver granted under Section 412 of the Code), nor has any funding waiver from the Internal Revenue Service been received or requested with respect to any Pension Plan, nor has Borrower or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by Section 412 of the Code, Section 302 of ERISA or the terms of any Pension Plan prior to the due dates of such contributions under Section 412 of the Code or Section 302 of ERISA, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C), 4063(a) or 4068 of ERISA with respect to any Pension Plan.

### **1.2.19 Prohibited Transactions and Payments.**

Neither Borrower, Guarantor nor any ERISA Affiliate has: (i) engaged in a nonexempt “prohibited transaction” as such term is defined in Section 406 of ERISA or Section 4975 of the Code; (ii) incurred any liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid; (iii) failed to make a required contribution or payment to a Multiemployer Plan; or (iv) failed to make a required installment or other required payment under Section 412 of the Code.

### **1.2.20 No Termination Event.**

No Termination Event has occurred or is reasonably expected to occur.

### **1.2.21 ERISA Litigation.**

No material proceeding, claim, lawsuit and/or investigation is existing or, to the best knowledge of Borrower and Guarantor, threatened concerning or involving any (i) employee welfare benefit plan (as defined in Section 3(l) of ERISA) currently maintained or contributed to by Borrower or any ERISA Affiliate, (ii) Pension Plan or (iii) Multiemployer Plan.

## **1.3 Employee Matters.**

### **1.3.1 Collective Bargaining Agreements; Grievances.**

Except as set forth in Schedule 5.19.1, (i) none of the employees of Borrower is subject to any collective bargaining agreement with Borrower, (ii) no petition for certification or union election is pending with respect to the employees of Borrower and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of Borrower and (iii) there are no strikes, slowdowns, work stoppages, unfair labor practice complaints, grievances, arbitration proceedings or controversies pending or, to the best knowledge of Borrower, threatened against Borrower by any of Borrower's employees, other than employee grievances or controversies arising in the ordinary course of business that could not in the aggregate be expected to have a Material Adverse Effect.

### **1.3.2 Claims Relating to Employment.**

Neither Borrower, Guarantor nor, to Borrower's and Guarantor's best knowledge, any employee of Borrower or Guarantor, is subject to any employment agreement or non-competition agreement with any former employer or any other Person due to (i) any information which Borrower or Guarantor would be prohibited from using under the terms of such agreement or (ii) any legal considerations relating to unfair competition, trade secrets or proprietary information.

### **1.4 Burdensome Obligations.**

After giving effect to the transactions contemplated by the Instruments (i) Borrower and Guarantor (A) will not be a party to or be bound by any franchise, agreement, deed, lease or other instrument, or be subject to any restriction, which is so unusual or burdensome so as to cause, in the foreseeable future, a Material Adverse Effect and (B) does not intend to incur, or believe that it will incur, debts beyond its ability to pay such debts as they become due. Borrower does not presently anticipate that future expenditures needed to meet the provisions of federal or state statutes, orders, rules or regulations will be so burdensome so as to have a Material Adverse Effect.

### **1.5 Subsidiaries.**

Borrower has no subsidiaries.

## **6.**

### **AFFIRMATIVE COVENANTS**

Until all of Borrower's and Guarantor's Obligations are paid and performed in full Borrower and Guarantor agree that they will:

#### **Legal Existence; Good Standing.**

Maintain their existence and their good standing in the jurisdiction of their formation and maintain their qualification to transact business in each jurisdiction in which the failure so to qualify would have a Material Adverse Effect.

#### **Inspection.**

Permit representatives of Lender, at any time without notice, to (i) visit their offices, (ii) examine their books and records and Accountants' reports relating thereto, (iii) make copies or extracts therefrom, (iv) discuss their affairs with their employees, (v) examine and inspect their Property and (vi) meet and discuss their affairs with the Accountants, and such Accountants, as a condition to their retention by Borrower and Guarantor, are hereby irrevocably authorized by Borrower and Guarantor to fully discuss and disclose all such affairs with Lender.

#### **Financial Statements and Other Information.**

Maintain a standard system of accounting in accordance with GAAP and furnish to Lender:

### **1.5.1 Monthly Statements.**

As soon as available, and in any event within twenty (20) days after the close of each month, an accounts receivable aging and borrowing base certificate from Borrower, as of the end of such month.

### **1.5.2 Quarterly Statements.**

As soon as is available and in any event within forty-five (45) days after the close of each quarter:

(a) copy of the balance sheet of Borrower and Guarantor, as of the end of such quarter;

(b) statements of operations and EBITDA of Borrower and Guarantor for such quarter; and

(c) such other financial information for the Borrower and Guarantor as is contained in Guarantor's 10-Q Report for such quarter or would be required in such report in the event Guarantor is no longer required to file reports under the Securities Exchange Act of 1934, as amended.

### **1.5.3 Annual Statements.**

As soon as available and in any event within 90 days after the close of Guarantor's fiscal year:

(a) the consolidated balance sheet of Guarantor and its subsidiaries as of the end of such fiscal year and the statements of operations, cash flows, shareholders' equity and EBITDA of Guarantor for such fiscal year (collectively, the "Basic Financial Statements");

(b) an opinion of the Accountants which shall accompany the Basic Financial Statements which opinion shall be unqualified as to going concern and scope of audit, stating that (i) the examination by the Accountants in connection with such Basic Financial Statements has been made in accordance with generally accepted auditing standards, (ii) such Basic Financial Statements have been prepared in conformity with GAAP and in a manner consistent with prior periods, and (iii) such Basic Financial Statements fairly present in all material respects the financial position and results of operations of Guarantor and its subsidiaries; and

(c) a letter from the Accountants stating that the statements of EBITDA were computed in accordance with the requirements of this Loan Agreement.

### **1.5.4 Compliance Certificate.**

As soon as is available and in any event within forty-five (45) days after the close of each quarter, a Compliance Certificate as of the end of such quarter.

### **1.5.5 Accountants' Certificate.**

Simultaneously with the delivery of the certified Basic Financial statements required by subsection 1.5.3, copies of a certificate of the Accountants stating that (i) they have checked the computations delivered by Guarantor in compliance with subsection 1.5.3, and (ii) in making the examination necessary for their audit of the Basic Financial Statements for such year, nothing came to their attention of a financial or accounting nature that caused them to believe that (A) Guarantor was not in compliance with the terms, covenants, provisions or conditions of any of the Loan Instruments, or (B) there shall have occurred any condition or event which would constitute an Event of Default, or, if so, specifying in such certificate all such instances of non-compliance and the nature and status thereof.

### **1.5.6 Audit Reports.**

Promptly upon receipt thereof, a copy of each report, other than the reports referred to in subsection 1.5.3, including any so-called "Management Letter" or similar report, submitted to Borrower or Guarantor by the Accountants in connection with any annual, interim or special audit made by the Accountants of the books of Borrower or Guarantor.

### **1.5.7 Notice of Defaults; Loss.**

Prompt written notice if: (i) any Indebtedness of Borrower or Guarantor is declared or shall become due and payable prior to its declared or stated maturity, or called and not paid when due, (ii) an event has occurred that enables the holder of any note, or other evidence of such Indebtedness, certificate or security evidencing any such Indebtedness of Borrower or Guarantor to declare such Indebtedness due and payable prior to its stated maturity, (iii) there shall occur and be continuing an Event of Default, accompanied by a statement setting forth what action Borrower or Guarantor proposes to take in respect thereof, or (iv) any event shall occur which has a Material Adverse Effect, including the amount or the estimated amount of any loss or adverse effect.

### **1.5.8 Notice of Suits; Adverse Events.**

Prompt written notice of: (i) any citation, summons, subpoena, order to show cause or other order naming Borrower or Guarantor a party to any proceeding before any Governmental Body which might reasonably be expected to have a Material Adverse Effect, including with such notice a copy of such citation, summons, subpoena, order to show cause or other order, (ii) any lapse or other termination of any license, permit, franchise, agreement or other authorization issued to Borrower or Guarantor by any Governmental Body or any other Person that is material to the operation of the business of Borrower or Guarantor, (iii) any refusal by any Governmental Body or any other Person to renew or extend any such license, permit, franchise, agreement or other authorization and (iv) any dispute between Borrower or Guarantor and any Governmental Body or any other Person, which lapse, termination, refusal or dispute referred to in clauses (ii) and (iii) above or in this clause (iv) could have a Material Adverse Effect.

### **1.5.9 Reports to Members, Creditors and Governmental Bodies.**

(a) Promptly upon becoming available, copies of all regular and periodic reports sent by Borrower or Guarantor to any of its creditors, and all registration statements and prospectuses filed by Guarantor with any securities exchange or with the Securities and Exchange Commission or any Governmental Body succeeding to any of its functions, and of all statements generally made

available by Borrower or Guarantor concerning material developments in the business of Borrower or Guarantor.

(b) Promptly upon becoming available, copies of any periodic or special reports filed by Borrower or Guarantor with any Governmental Body or Person, if such reports indicate any material change in the business, operations, affairs or condition of Borrower or Guarantor, or if copies thereof are requested by Lender, and copies of any material notices and other communications from any Governmental Body or Person which specifically relate to Borrower or Guarantor.

#### **1.5.10 ERISA Notices and Requests.**

(a) With reasonable promptness, and in any event within 30 days after occurrence of any of the following, notice and/or copies of: (i) the establishment of any new Employee Benefit Plan, Pension Plan or Multiemployer Plan; (ii) the commencement of contributions to any Employee Benefit Plan, Pension Plan or Multiemployer Plan to which Borrower or any of its ERISA Affiliates was not previously contributing or any increase in the benefits of any existing Employee Benefit Plan, Pension Plan or Multiemployer Plan; (iii) each funding waiver request filed with respect to any Employee Benefit Plan and all communications received or sent by Borrower or any ERISA Affiliate with respect to such request; and (iv) the failure of Borrower or any of its ERISA Affiliates to make a required installment or payment under Section 302 of ERISA or Section 412 of the Code by the due date.

(b) Promptly and in any event within 10 days of becoming aware of the occurrence of or forthcoming occurrence of any (i) Termination Event or (ii) "prohibited transaction," as such term is defined in Section 406 of ERISA or Section 4975 of the Code, in connection with any Pension Plan or any trust created thereunder, a notice specifying the nature thereof, what action Borrower or Guarantor has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto.

(c) With reasonable promptness but in any event within 10 days after the occurrence of any of the following, copies of: (i) any favorable or unfavorable determination letter from the Internal Revenue Service regarding the qualification of an Employee Benefit Plan under Section 401 (a) of the Code; (ii) all notices received by Borrower or any ERISA Affiliate of the PBGC's intent to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan; (iii) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Borrower or any ERISA Affiliate with the Internal Revenue Service with respect to each Pension Plan; and (iv) all notices received by Borrower or any ERISA Affiliate from a Multiemployer Plan sponsor concerning the imposition or amount of withdrawal liability pursuant to Section 4202 of ERISA; and written notice within two Business Days of Borrower's or any ERISA Affiliate's filing of or intention to file a notice of intent to terminate any Pension

Plan under a distress termination within the meaning of Section 4041(c) of ERISA.

#### **1.5.11 Other Information.**

(a) Immediate notice of any change in the location of any Property of Borrower or Guarantor which is material to or necessary for the continued operation of Borrower's business, any change in the name of Borrower, any sale or purchase of Property outside the regular course of business of Borrower, any change in the residence of any Personal Guarantor and any change in the business or financial affairs of Borrower, which change could have a Material Adverse Effect.

(b) Promptly upon request therefor, such other information and reports relating to the past, present or future financial condition, operations, plans and projections of Borrower as Lender reasonably may request from time to time.

#### **Reports to Governmental Bodies and Other Persons.**

Timely file all material reports, applications, documents, instruments and information required to be filed pursuant to all rules and regulations of any Governmental Body or other Person having jurisdiction over the operation of the business of Borrower or Guarantor, including, but not limited to, such of the Loan Instruments as are required to be filed with any such Governmental Body or other Person pursuant to applicable rules and regulations promulgated by such Governmental Body or other Person.

#### **Maintenance of Licenses and Other Agreements.**

Maintain in full force and effect at all times, and apply in a timely manner for renewal of, all licenses, trademarks, trade names and agreements necessary for the operation of their business, the loss of any of which could have a Material Adverse Effect.

#### **Insurance.**

##### **1.5.12 Maintenance of Insurance.**

Maintain in full force and effect Business Insurance as may be required by law or by the Loan Instruments and as may be customarily maintained by a similarly situated business, all of which shall be written by insurers and in amounts and forms satisfactory to Lender. Lender shall be named as an additional insured on each policy of liability insurance. Each policy of casualty insurance shall contain a standard "Lender loss payable" endorsement in favor of Lender.

##### **1.5.13 Claims and Proceeds.**

Borrower and Guarantor hereby direct all insurers under all policies of Business Insurance to pay all proceeds payable thereunder directly to Lender and Borrower and Guarantor hereby authorize Lender to collect all such proceeds. Borrower and Guarantor irrevocably appoint Lender (and all officers, employees of Lender), as Borrower's and Guarantor's true and lawful attorney and agent in fact for the purpose of and with power to make, settle and adjust claims

under such policies of insurance, endorse the name of Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance, and to make all determinations and decisions with respect to such policies of insurance. Borrower and Guarantor acknowledge that such appointment as attorney and agent in fact is a power, coupled with an interest, and therefore is irrevocable. Borrower and Guarantor shall promptly notify Lender of any loss, damage, destruction or other casualty to the Collateral. The insurance proceeds received on account of any loss, damage, destruction or other casualty at the option of Lender may be (i) applied to the payment of Borrower's Obligations in the following order of priority: (A) first, to the payment of any and all sums which then are due and payable pursuant to the terms of the Loan Instruments, other than the Principal Balance and interest accrued thereon, (B) next, to accrued and unpaid interest on the Principal Balance, and (C) then, to the Principal Balance, or (ii) held by Lender and applied to pay for the cost of repair or replacement of the Property which was the subject of such loss, damage, destruction or other casualty, in which event such proceeds shall be made available in the manner and under such conditions as Lender reasonably may require. In the event such proceeds are to be applied to the repair or replacement of Property, the Property shall be repaired or replaced so as to be of at least equal value and substantially the same character as prior to such loss, damage, destruction or other casualty.

### **1.6 Future Leases.**

Deliver to Lender, concurrently with the execution by Borrower or Guarantor, as lessee, of any lease pertaining to real property, (i) an executed copy thereof, and (ii) a Landlord's Consent from the lessor under such lease.

### **1.7 Environmental Matters.**

At all times comply with, and be responsible for, its obligations under all Environmental Laws applicable to the Real Property and Leasehold Property and any other Property owned by Borrower or Guarantor or used by Borrower in the operation of Borrower's business. At its sole cost and expense, Borrower shall (i) comply in all respects with (A) any notice of any violation or administrative or judicial complaint or order having been filed against Borrower or Guarantor, any portion of any Real Property or Leasehold Property or any other Property owned by Borrower or Guarantor or used by Borrower or Guarantor in the operation of its business alleging violations of any law, ordinance and/or regulation requiring Borrower or Guarantor to take any action in connection with the release, transportation and/or clean-up of any Hazardous Materials, and (B) any notice from any Governmental Body or any other Person alleging that Borrower or Guarantor is or may be liable for costs associated with a response or clean-up of any Hazardous Materials or any damages resulting from such release or transportation, or (ii) diligently contest in good faith by appropriate proceedings any demands set forth in such notices, provided (A) reserves in an amount reasonably satisfactory to Lender to pay the costs associated with complying with any such notice are established by Borrower or Guarantor and (B) no Lien would or will attach to the Property which is the subject of any such notice as a result of any compliance by Borrower or Guarantor which is delayed during any such contest. Promptly upon receipt of any notice described in the foregoing clause (i), Borrower or Guarantor shall deliver to Lender a copy thereof. At the request of Lender, Borrower or Guarantor shall deliver to Lender an environmental audit with respect to any real estate acquired or leased by Borrower or Guarantor.

### **1.8 Compliance with Laws.**

Comply with all federal, state and local laws, ordinances, requirements and regulations and all judgments, orders, injunctions and decrees applicable to Borrower or Guarantor and their operations, the failure to comply with which would reasonably be expected to have a Material Adverse Effect.

### **1.9 Taxes and Claims.**

Pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any Property belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a Lien (other than a Permitted Lien) upon the Property of Borrower or Guarantor, provided that Borrower and Guarantor shall not be required by this Section 6.10 to pay any such amount if the same is being contested diligently and in good faith by appropriate proceedings and as to which Borrower and Guarantor has set aside reserves on its books reasonably satisfactory to Lender.

### **1.10 Maintenance of Properties.**

Maintain all of its Properties necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.

### **1.11 Governmental Approvals.**

Upon the exercise by Lender of any power, right or privilege pursuant to the provisions of any of the Loan Instruments requiring any consent, approval or authorization of any Governmental Body, promptly execute and cause the execution of all applications, certificates, instruments and other documents that Lender may be required to obtain for such consent, approval or authorization.

### **1.12 Payment of Indebtedness.**

Except as to matters being contested in good faith and by appropriate proceedings, promptly pay when due, or in conformance with customary trade terms, all of its Indebtedness.

### **1.13 Maintenance of Accounts.**

Continue to maintain its primary disbursement account and all of its collection accounts (including all such accounts for its affiliates) with Lender under Lender's customary terms and conditions. Borrower shall not be required to maintain a compensating balance in its disbursement accounts other than balances sufficient to cover disbursement activities and to pay service charges.

## 7.

### NEGATIVE COVENANTS

Until all of Borrower's Obligations are paid and performed in full, Borrower and Guarantor shall not:

#### **1.14** Borrowing.

Create, incur, assume or suffer to exist any liability for Indebtedness for Borrowed Money except (i) Borrower's Obligations; (ii) Permitted Senior Indebtedness; and (iii) Permitted Subordinated Indebtedness.

#### **1.15** Liens.

Create, incur, assume or suffer to exist any Lien upon any of its Property, including Guarantor's capital stock ownership of Borrower, whether now owned or hereafter acquired, except Permitted Liens.

#### **1.16** Merger and Acquisition.

Except for the proposed migratory merger of Keystone into an Indiana corporation, with the latter as survivor (and further provided that Lender has received (a) thirty (30) days' advance written notice of same, (b) copies of the forms of all documents which it may reasonably request, e.g., Agreement and Plan of Merger and Articles of Incorporation/Merger, no later than fifteen (15) days prior to the consummation of such merger, (c) a security agreement executed by the entity which will survive the merger, substantially in the form of security agreement then existing between Lender and the other Borrower Entities with respect to Borrower's Obligations, no later than ten (10) days prior to the consummation of such merger, and (d) certified copies of all filed and/or executed merger documents which it may deem sufficient, in its reasonable judgment, to protect its rights with respect to this Agreement and the transactions contemplated hereby, promptly upon consummation of such merger), consolidate with or merge with or into any Person, or acquire directly or indirectly all or substantially all of the capital stock, equity interests or Property of any Person.

#### **1.17** Contingent Liabilities.

Assume, guarantee, endorse, contingently agree to purchase, become liable in respect of any letter of credit, or otherwise become liable upon the obligation of any Person, except for liabilities arising from the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

#### **1.18** Dividends and Distributions.

Except as may be required by Carolina's organic documents, make any dividends, distributions or other expenditures with respect to Borrower's or Guarantor's capital stock ownership interests or apply any of its Property to the purchase, redemption or other retirement

of, or set apart any sum for the payment of, or make any other distribution by reduction of capital or otherwise in respect of, any of the Borrower's or Guarantor's capital stock ownership interests.

**1.19 Capital Expenditures.**

In any year, make or incur, any Capital Expenditures, other than Capital Expenditures not in excess of the sum of \$150,000.

**1.20 Payments of Indebtedness for Borrowed Money**

Make any voluntary or optional prepayment of any Indebtedness for Borrowed Money other than Borrower's Obligations and other than interest payments due to the holders of the Permitted Subordinated Indebtedness. Such interest payments with respect to the Permitted Subordinated Indebtedness may only be made upon regular terms and conditions and only so long as no Event of Default exists or has been declared.

**1.21 Investments, Loans.**

At any time purchase or otherwise acquire, hold or invest in the capital stock of, or any other interest in, any Person, or make any loan or advance to, or enter into any arrangement for the purpose of providing funds or credit to, or make any other investment, whether by way of capital contribution or otherwise, in or with any Person, including, without limitation, any Affiliate, except (i) investments in direct obligations of, or instruments unconditionally guaranteed by, the United States of America or in certificates of deposit issued by a Qualified Depository, (ii) investments in commercial or finance paper which, at the time of investment, is rated "A" or better by Moody's Investors Service, Inc., or Standard & Poor's Corporation, respectively, or at the equivalent rate by any of their respective successors, (iii) any interests in any money market account maintained, at the time of investment, with a Qualified Depository, the investments of which, at the time of investment, are restricted to the types specified in clause (i) above. All investments permitted pursuant to clauses (i), (ii) and (iii) of this Section 7.8 shall have a maturity date not exceeding one year.

**1.22 Fundamental Business Changes.**

Materially change the nature of its business.

**1.23 Facility Sites.**

Change the locations of its chief executive office or other Property used in the operation of its business unless (i) Lender shall have received at least 30 days' prior written notice thereof, (ii) Lender shall have received satisfactory evidence that such change could not reasonably be expected to have a Material Adverse Effect and (iii) Borrower and Guarantor shall have executed and delivered to Lender any documents Lender reasonably may require in order to maintain the validity and priority of the Security Interests.

#### **1.24 Sale or Transfer of Assets.**

Sell, lease, assign, transfer or otherwise dispose of any Property (other than in the ordinary course of business) including, but not limited to Guarantor's stock ownership interests in Borrower, except for the sale or disposition of (A) Property which is not material to or necessary for the continued operation of its business and (B) obsolete or unusable items of equipment which promptly are replaced with new items of equipment of like function and comparable value to the unusable items of equipment when the same were new or not obsolete or unusable, provided such replacement items of equipment shall become subject to the Security Interests. This Section 1.24 shall not apply to the proposed conversion of Carolina to an Indiana limited liability company or to the reincorporation of Keystone as an Indiana corporation, provided in both cases that Lender has been notified in advance of such transactions, and has been provided with certified copies of all documents related thereto which it may deem sufficient, in its reasonable judgment, to protect its rights with respect to this Agreement and the transactions contemplated hereby.

#### **1.25 Amendment of Certain Agreements.**

Amend, modify or waive any term or provision of its articles of organization, the Leases or any of the Instruments. This Section 1.25 shall not apply to the proposed conversion of Carolina to an Indiana limited liability company or the reincorporation of Keystone as an Indiana corporation, provided in both cases that Lender has been notified in advance of such transactions, and has been provided with certified copies of all documents related thereto which it may deem sufficient, in its reasonable judgment, to protect its rights with respect to this Agreement and the transactions contemplated hereby.

#### **1.26 Acquisition of Additional Properties.**

Acquire any additional Property except such Property as is necessary to or useful in the operation of its business, provided such acquisitions shall be subject to the conditions and limitations set forth in this Loan Agreement.

#### **1.27 Transactions with Affiliates.**

Sell, lease, assign, transfer or otherwise dispose of any Property to any of its Affiliates, lease Property, render or receive services or purchase assets from any such Affiliate, or otherwise enter into any contractual relationship with any such Affiliate, except in the ordinary course of business on terms no less favorable to Borrower or Guarantor than would be obtainable on an arm's-length basis by Borrower or Guarantor from a Person who is not an Affiliate of Borrower or Guarantor. This Section 1.27 shall not apply to the proposed conversion of Carolina to an Indiana limited liability company or the reincorporation of Keystone as an Indiana corporation, provided in both cases that Lender has been notified in advance of such transactions, and has been provided with certified copies of all documents related thereto which it may deem sufficient, in its reasonable judgment, to protect its rights with respect to this Agreement and the transactions contemplated hereby.

## **1.28 Compliance with ERISA.**

- (i) Permit the occurrence of any Termination Event which would result in a liability to Borrower or any ERISA Affiliate in excess of \$50,000;
- (ii) Permit the present value of all benefit liabilities under all Pension Plans to exceed the current value of the assets of such Pension Plans allocable to such benefit liabilities by more than \$50,000;
- (iii) Permit any accumulated funding deficiency in excess of \$50,000 (as defined in Section 302 of ERISA and Section 412 of the Code) with respect to any Pension Plan, whether or not waived;
- (iv) Fail to make any contribution or payment to any Multiemployer Plan which Borrower or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto which results in or is likely to result in a liability in excess of \$50,000;
- (v) Engage, or permit any ERISA Affiliate to engage, in any “prohibited transaction” as such term is defined in Section 406 of ERISA or Section 4975 of the Code for which a civil penalty pursuant to Section 502(i) of ERISA or a tax pursuant to Section 4975 of the Code in excess of \$50,000 is imposed;
- (vi) Permit the establishment of any Employee Benefit Plan providing post-retirement welfare benefits or establish or amend any Employee Benefit Plan which establishment or amendment could result in liability to Borrower or any ERISA Affiliate or increase the obligation of Borrower or any ERISA Affiliate to a Multiemployer Plan which liability or increase, individually or together with all similar liabilities and increases, is material to Borrower or any ERISA Affiliate; or
- (vii) Fail, or permit any ERISA Affiliate to fail, to establish, maintain and operate each Employee Benefit Plan in compliance in all material respects with ERISA, the Code and all other applicable laws and regulations and interpretations thereof.

## **1.29 Maximum Unsubordinated Debt to EBITDA Ratio.**

Permit the ratio of Unsubordinated Indebtedness to EBITDA to exceed (i) 3.5 to 1 during the period ending September 30, 2004, (ii) 3.25 to 1 during the period ending December 31, 2004, or (iii) 3.0 to 1 during any subsequent period. For the purposes of this Section 7.16, EBITDA shall be determined based on a rolling four (4) quarter basis.

## **7.17 Minimum Tangible Net Worth.**

Fail to maintain Tangible Net Worth of at least \$1,000,000.

## **7.18 Minimum Permitted Subordinated Indebtedness.**

Fail to maintain Permitted Subordinated Indebtedness of at least \$3,850,000.

## **7.19 Minimum Tangible Net Worth Plus Permitted Subordinated Indebtedness.**

Fail to maintain Tangible Net Worth plus Permitted Subordinated Indebtedness of at least \$2,750,000.

## **7.20 Minimum Debt Service Ratio.**

Fail to maintain a minimum debt service ratio for Guarantor and its subsidiaries (on a consolidated basis) of 1.25:1 based on a rolling four (4) quarter average, to be calculated as follows: (1) the sum of: (i) Net Income before taxes, (ii) depreciation and amortization expense, (iii) interest expense, and (iv) rent and lease expense, less (v) taxes, distributions, and cash dividends paid, divided by (2) the sum of: (i) current maturity of long term debt, (ii) interest expense, and (iii) rent and lease expense. For the purposes of testing the minimum debt service ratio, “interest expense” in the denominator shall be defined as interest expense of Unsubordinated Indebtedness plus interest paid on Permitted Subordinated Indebtedness. For the purposes of testing the minimum debt service ratio, “rent and lease expense” shall mean all amounts payable to any landlords and lessors by any Borrower Entity for the use of any real or personal property.

#### **7.21 Testing of Financial Covenants.**

All of the financial covenants set forth in paragraphs 7.16 through 7.20 shall be fully satisfied by Guarantor and Borrower on a quarterly reporting basis.

### **8.**

#### **DEFAULT AND REMEDIES**

#### **1.30 Events of Default.**

The occurrence of any of the following shall constitute an “Event of Default” under the Loan Instruments:

##### **1.30.1 Default in Payment.**

If Borrower shall fail to pay all or any portion of Borrower's Obligations when the same become due and payable.

##### **1.30.2 Breach of Covenants.**

(a) If Borrower or Guarantor shall fail to observe or perform any covenant or agreement made by Borrower contained in Section 6.1, 6.2, 6.6, or in Article VII;

(b) If Borrower or Guarantor shall fail to observe or perform any covenant or agreement contained in Section 6.3, and such failure shall continue for 10 days after the occurrence of such Event of Default; or

(c) If Borrower or Guarantor shall fail to observe or perform any covenant or agreement (other than those referred to in subparagraph (a) or (b) above or specifically addressed elsewhere in this Section 8.1) in any of the Loan Instruments, and such failure shall continue for a period of 30 days after the occurrence of such Event of Default.

### **1.30.3 Breach of Warranty.**

If any representation or warranty made by or on behalf of Borrower or Guarantor in or pursuant to any of the Loan Instruments or in any instrument or document furnished in compliance with the Loan Instruments shall prove to be false or misleading in any material respect.

### **1.30.4 Default Under Other Indebtedness for Borrowed Money**

If (i) Borrower or Guarantor at any time shall in default (as principal or guarantor or other surety) in the payment of any principal of or premium or interest on any Indebtedness for Borrowed Money (other than Borrower's Obligations or the Permitted Subordinated Indebtedness) beyond the grace period, if any, applicable thereto.

### **1.30.5 Bankruptcy.**

(a) If Borrower, Guarantor or any Personal Guarantor shall (i) generally not be paying its debts as they become due, (ii) file, or consent, by answer or otherwise, to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or insolvency under the laws of any jurisdiction, (iii) make an assignment for the benefit of creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers for it or for any substantial part of its Property, or (v) be adjudicated insolvent.

(b) If any Governmental Body of competent jurisdiction shall enter an order appointing, without consent of Borrower or Guarantor, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its Property, or if an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of Borrower or Guarantor or if any petition for any such relief shall be filed against it and such petition shall not be dismissed or stayed within 60 days.

### **1.30.6 Judgments.**

If there shall exist final judgments or awards against Borrower which shall have been outstanding for a period of 30 days or more from the date of the entry thereof and shall not have been discharged in full or stayed pending appeal, if the aggregate amount of all such judgments and awards not covered by insurance exceeds \$10,000.

### **1.30.7 Impairment of Licenses; Other Agreements.**

If (i) any Governmental Body shall revoke, terminate, suspend or adversely modify any license of Borrower, the adverse modification or non-continuation of which could have a Material Adverse Effect, or (ii) there shall exist any violation or default in the performance of, or a material failure to comply with, any agreement, or condition or term of any license, which violation, default or failure has a Material Adverse Effect, or (iii) any agreement which is necessary to the operation of the business of Borrower shall be revoked or terminated and not replaced by a

substitute reasonably acceptable to Lender within 30 days after the date of such revocation or termination, and such revocation or termination and non-replacement could have a Material Adverse Effect.

### **1.30.8 Collateral.**

If any material portion of the Collateral shall be seized or taken by a Governmental Body or Person, or Borrower or Guarantor shall fail to maintain or cause to be maintained the Security Interests and priority of the Loan Instruments as against any Person, or the title and rights of Borrower or Guarantor to any material portion of the Collateral shall have become the subject matter of litigation which could reasonably be expected to result in impairment or loss of the security provided by the Loan Instruments.

### **1.30.9 Plans.**

If an event or condition specified in subsection 1.5.10 hereof shall occur or exist with respect to any Pension Plan or Multiemployer Plan and, as a result of such event or condition, together with all other such events or conditions, any Borrower or any ERISA Affiliate shall incur, or in the opinion of Lender be reasonably likely to incur, a liability to a Pension Plan or Multiemployer Plan or the PBGC (or any of them) which, in the reasonable judgment of Lender, would have a Material Adverse Effect.

### **1.30.10 Change in Control.**

If, absent consent of the Lender, at least 20% of the Guarantor's common stock is not owned, directly or indirectly, by the Personal Guarantors or if either of the Personal Guarantors dies or resigns from his positions as officer and director of Borrower and Guarantor.

### **1.30.11 Material Adverse Effect.**

If, in Lender's reasonable opinion, the occurrence and continuance of any event or condition, financial or otherwise, could reasonably be likely to have a Material Adverse Effect.

## **1.31 Acceleration of Borrower's Obligations.**

Upon the occurrence of:

(a) any Event of Default described in clauses (ii), (iii), (iv) and (v) of subsection 8.1.5(a) or in 8.1.5(b), the Revolving Loan Commitment shall automatically terminate and all of Borrower's Obligations at that time outstanding automatically shall mature and become due; and

(b) any other Event of Default, Lender, at any time, at its option, without further notice or demand, may declare all of Borrower's Obligations due and payable, whereupon the Revolving Loan Commitment shall automatically terminate and all of Borrower's Obligations immediately shall mature and become due and payable, all without presentment, demand, protest or notice (other than notice of the declaration referred to in clause (b) above), all of which hereby are waived.

### **1.32 Remedies on Default.**

If Borrower's Obligations have been accelerated pursuant to Section 8.2, Lender may:

#### **1.32.1 Enforcement of Security Interests.**

Enforce its rights and remedies under the Loan Instruments in accordance with their respective terms; and/or

#### **1.32.2 Other Remedies.**

Enforce any of the rights or remedies accorded to Lender at equity or law, by virtue of statute or otherwise.

### **1.33 Application of Funds.**

Any funds received by Lender pursuant to the exercise of any rights accorded to Lender pursuant to, or by the operation of any of the terms of, any of the Loan Instruments, including, without limitation, insurance proceeds, condemnation proceeds or proceeds from the sale of Collateral, shall be applied to Borrower's Obligations in the following order of priority:

#### **1.33.1 Expenses.**

First to the payment of (i) all fees and expenses actually incurred, including, without limitation, court costs, fees of appraisers, title charges, costs of maintaining and preserving the Collateral, costs of sale, and all other costs incurred by Lender in exercising any rights accorded to such Persons pursuant to the Loan Instruments or by applicable law, including, without limitation, reasonable attorney's fees, and (ii) all Liens superior to the Liens of Lender except such superior Liens subject to which any sale of the Collateral may have been made.

#### **1.33.2 Borrower's Obligations.**

Next, to Lender, in such order as Lender may determine, to repay the Borrower's Obligation.

#### **1.33.3 Surplus.**

Any surplus, to the Person or Persons entitled thereto.

### **1.34 Performance of Borrower's Obligations.**

If Borrower or Guarantor fails to (i) maintain in force and pay for any insurance policy or bond which Borrower or Guarantor is required to provide pursuant to any of the Loan Instruments, (ii) keep the Collateral free from all Liens except for Permitted Liens, (iii) pay when due all taxes, levies and assessments on or in respect of the Collateral, except as otherwise permitted pursuant to the terms hereof, (iv) make all payments and perform all acts on the part of Borrower or Guarantor to be paid or performed in the manner required by the terms hereof and by the terms of the other Loan Instruments with respect to any of the Collateral, including, without limitation, all expenses of protecting, storing, warehousing, insuring, handling and maintaining the Collateral, (v) keep fully and perform promptly any other of the obligations of

Borrower or Guarantor hereunder or under any of the other Loan Instruments, and (vi) keep fully and perform promptly the obligations of Borrower with respect to any issue of Indebtedness for Borrowed Money secured by a Permitted Prior Lien, then Lender may (but shall not be required to) procure and pay for such insurance policy or bond, place such Collateral in good repair and operating condition, pay, contest or settle such Liens or taxes or any judgments based thereon or otherwise make good any other aforesaid failure of Borrower or Guarantor. Borrower shall reimburse Lender immediately upon demand for all sums paid or advanced on behalf of Borrower for any such purpose, together with costs and expenses (including reasonable attorney's fees) paid or incurred by Lender in connection therewith and interest on all sums advanced from the date of advancement until repaid to Lender shall be calculated at the Default Rate. All such sums advanced by Lender, with interest thereon, immediately upon advancement thereof, shall be deemed to be part of Borrower's Obligations.

## 9.

### EXPENSES AND INDEMNITY

#### **1.35 Attorney's Fees and Other Fees and Expenses.**

Borrower agrees to pay to Lender on demand all expenses incurred by Lender in connection with the preparation of this Loan Agreement and contemplated hereby (including, without limitation, any appraisal fees, environmental audit fees and title and recording charges) and in connection with any amendments, modifications or waivers (whether or not the same become effective) under or in respect of any of the Loan Instruments, including, without limitation:

##### **1.35.1 Fees and Expenses for Preparation of Loan Instruments.**

All expenses, disbursements (including, without limitation, charges for required mortgagee's title insurance, lien searches, reproduction of documents, long distance telephone calls and overnight express carriers) and reasonable attorney's fees, actually incurred of special counsel and other counsel retained by Lender in connection with (i) the preparation and negotiation of the Loan Instruments or any amendments, modifications or waivers hereto or thereto and (ii) the administration of the Revolving Loan.

##### **1.35.2 Fees and Expenses in Enforcement of Rights or Defense of Loan Instruments.**

Any expenses or other costs, including reasonable attorney's fees actually incurred by Lender, in connection with the enforcement or collection against Borrower of any provision of any of the Loan Instruments, and in connection with or arising out of any litigation, investigation or proceeding instituted by any Governmental Body or any other Person with respect to any of the Loan Instruments, whether or not suit is instituted, including, but not limited to, such costs or expenses arising from the enforcement or collection against Borrower or Guarantor of any provision of any of the Loan Instruments, in any workout or restructuring or in any state or federal bankruptcy or reorganization proceeding.

### **1.36 Indemnity.**

Borrower and Guarantor agree to indemnify and save Lender harmless of and from the following:

#### **1.36.1 Brokerage Fees.**

The fees, if any, of brokers and finders engaged by Borrower or Guarantor.

#### **1.36.2 General.**

Any loss, cost, liability, damage or expense (including reasonable attorneys' fees and expenses) incurred by Lender in investigating, preparing for, defending against, providing evidence, producing documents or taking other action in respect of any commenced or threatened litigation, administrative proceeding, suit instituted by any Person or investigation under any law, including any federal securities law, the Bankruptcy Code, any relevant state corporate statute or any other securities law, bankruptcy law or law affecting creditors generally of any jurisdiction, or any regulation pertaining to any of the foregoing, or at common law or otherwise, relating, directly or indirectly, to the transactions contemplated by or referred to in, or any other matter related to, the Loan Instruments, whether or not Lender is a party to such litigation, proceeding or suit, or is subject to such investigation, except to the extent of any gross negligence or willful misconduct of Lender.

#### **1.36.3 Operation of Collateral; Joint Venturers.**

Any loss, cost, liability, damage or expense (including reasonable attorneys' fees and expenses) incurred in connection with the ownership, operation or maintenance of the Collateral, the construction of Lender and Borrower as having the relationship of joint venturers or partners or the determination that Lender has acted as agent for Borrower.

#### **1.36.4 Environmental Indemnity.**

Any and all claims, losses, damages, response costs, clean-up costs and expenses suffered and/or incurred at any time by Lender arising out of or in any way relating to the existence at any time of any Hazardous Materials in, on, under, at transported to or from, or used in the construction and/or renovation of, any of the Real Property or Leasehold Property, or otherwise with respect to any Environmental Law, and/or the failure of any obligor to perform its obligations and covenants hereunder with respect to environmental matters, including, but not limited to: (i) claims of any Persons for damages, penalties, response costs, clean-up costs, injunctive or other relief, (ii) costs of removal and restoration, including fees of attorneys and experts, and costs of reporting the existence of Hazardous Materials to any Governmental Body, and (iii) any expenses or obligations, including attorney's fees and expert witness fees, incurred at, before and after any trial or other proceeding before any Governmental Body or appeal therefrom whether or not taxable as costs, including, without limitation, witness fees, deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Borrower to Lender when incurred by Lender.

## 10.

### MISCELLANEOUS

#### 1.37 Notices.

All notices and communications under this Loan Agreement shall be in writing and shall be (i) delivered in person, (ii) sent by telecopy, or (iii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case as follows:

To Lender:

U.S. Bank National Association  
209 South LaSalle St., Suite 410  
Chicago, IL 60604  
Attn: Craig B. Collinson, Senior Vice President  
Telecopy: (312) 325-8750

Copy to:

Gould & Ratner  
222 N. LaSalle Street, 8<sup>th</sup> Floor  
Chicago, IL 60601-1086  
Attn: Christopher J. Horvay, Esq.  
Telecopy: (312) 236-3241

To Borrower and Guarantor:

US 1 Industries, Inc.  
1000 Colfax Street  
Gary, IN 46406  
Attn: Michael E. Kibler and Harold Antonson

Copy to:

Troutman Sanders LLP  
600 Peachtree Street NE  
Atlanta, GA 30308  
Attn: Brink Dickerson, Esq.  
Telephone No.: (404) 885-3822

or to any other address or telecopy number, as to any of the parties hereto, as such party shall designate in a written notice to the other parties hereto. All notices sent pursuant to the terms of this Section 11. 1 shall be deemed received (i) if personally delivered, then on the Business Day of delivery, (ii) if sent by telecopy before 2:00 p.m. Chicago time, on the day sent if a Business Day or if such day is not a Business Day or if sent after 2:00 p.m. Chicago time, then on the next Business Day, (iii) if sent by overnight, express carrier, on the next Business Day immediately following the day sent, or (iv) if sent by registered or certified mail, on the earlier of the fifth Business Day following the day sent or when actually received. Any notice by telecopy shall be followed by delivery on the next Business Day by overnight, express carrier or by hand.

#### 1.38 Survival of Loan Agreement; Indemnities.

All covenants, agreements, representations and warranties made in this Loan Agreement and in the certificates delivered pursuant hereto shall continue in full force and effect so long as any of Borrower's Obligations remain outstanding, unperformed or unpaid. Notwithstanding the

repayment of all amounts due under the Loan Instruments, the cancellation of the Revolving Note and the release and/or cancellation of any and all of the Loan Instruments or the foreclosure of any Liens on the Collateral, the obligations of Borrower and Guarantor to indemnify Lender with respect to the expenses, damages, losses, costs and liabilities described in Section 9.2 shall survive until all applicable statute of limitations periods with respect to actions which may be brought against Lender has run.

**1.39 Further Assurance.**

From time to time, Borrower and Guarantor shall execute and deliver to Lender such additional documents as Lender reasonably may require to carry out the purposes of the Loan Instruments and to protect Lender's rights thereunder, and not take any action inconsistent with the purposes of the Loan Instruments.

**1.40 Taxes and Fees.**

Should any tax (other than taxes based upon the net income of Lender), recording or filing fees become payable in respect of any of the Loan Instruments, or any amendment, modification or supplement thereof, Borrower agrees to pay the same on demand, together with any interest or penalties thereon attributable to any delay by Borrower in meeting Lender's demand, and agrees to hold Lender harmless with respect thereto.

**1.41 Severability.**

In the event that any provision of this Loan Agreement is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court or any other Governmental Body, as applicable, the validity, legality and enforceability of the remaining terms and provisions of this Loan Agreement shall not in any way be affected or impaired thereby, all of which shall remain in full force and effect, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this Loan Agreement.

**1.42 Waiver.**

No delay on the part of Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude other or further exercise thereof, or be deemed to establish a custom or course of dealing or performance between the parties hereto, or preclude the exercise of any other right, power or privilege.

**1.43 Modification of Loan Instruments.**

No modification or waiver of any provision of any of the Loan Instruments shall be effective unless the same shall be in writing and signed by Lender. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Borrower or Guarantor in any case shall entitle Borrower or Guarantor to any other or further notice or demand in the same, similar or other circumstances.

**1.44** Captions.

The headings in this Loan Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

**1.45** Successors and Assigns.

This Loan Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided that Borrower may not assign any of its rights or delegate any of its duties hereunder to any other Person.

**1.46** Remedies Cumulative.

All rights and remedies of Lender pursuant to this Loan Agreement, any other Loan Instruments or otherwise, shall be cumulative and non-exclusive, and may be exercised singularly or concurrently. Lender shall not be required to prosecute collection, enforcement or other remedies against any Person before proceeding against Borrower or Guarantor to enforce or resort to any security, liens, collateral or other rights of Lender. One or more successive actions may be brought against Borrower and/or any other Person, either in the same action or in separate actions, as often as Lender deems advisable, until all of Borrower's Obligations are paid and performed in full.

**1.47** Entire Agreement; Conflict.

This Loan Agreement and the other Loan Instruments executed prior or pursuant hereto constitute the entire agreement among the parties hereto with respect to the transactions contemplated hereby or thereby and supersede any prior agreements, whether written or oral, relating to the subject matter hereof. In the event of a conflict between the terms and conditions set forth herein and the terms and conditions set forth in any other Loan Instrument, the terms and conditions set forth herein shall govern.

**1.48** Applicable Law.

The Loan Instruments shall be construed in accordance with and governed by the laws and decisions of the State of Illinois, without regard to the conflict of laws principles thereof. For purposes of this Section 10.12, the Loan Instruments shall be deemed to be performed and made in the State of Illinois.

**1.49** JURISDICTION AND VENUE.

BORROWER AND GUARANTOR HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND GUARANTOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THE LOAN INSTRUMENTS SHALL BE LITIGATED IN EITHER THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, OR IF LENDER INITIATES SUCH ACTION, IN ADDITION TO THE

FOREGOING COURTS, ANY COURT IN WHICH LENDER SHALL INITIATE OR TO WHICH LENDER SHALL REMOVE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. BORROWER AND GUARANTOR HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN OR REMOVED BY LENDER TO ANY OF SUCH COURTS, AND HEREBY AGREE THAT PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN MAY BE SERVED IN THE MANNER PROVIDED FOR NOTICES HEREIN, AND AGREE THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO SECTION 10.1. BORROWER AND GUARANTOR WAIVE ANY CLAIM THAT EITHER THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. TO THE EXTENT PROVIDED BY LAW, SHOULD BORROWER AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY THE COURT AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER AND GUARANTOR SET FORTH IN THIS SECTION 10.13 SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER AND GUARANTOR HEREBY WAIVE THE RIGHT TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

**1.50** WAIVER OF RIGHT TO JURY TRIAL.

LENDER, BORROWER AND GUARANTOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER ANY OF THE LOAN INSTRUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED THEREBY WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND, THEREFORE, THE PARTIES AGREE THAT ANY LAWSUIT ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

**1.51** Time of Essence.

Time is of the essence for the performance by Borrower of the obligations set forth in this Loan Agreement and the other Loan Instruments.

**1.52** Estoppel Certificate.

Within 15 days after Lender requests Borrower and Guarantor to do so, Borrower and Guarantor will execute and deliver to Lender a statement certifying (i) that this Loan Agreement is in full force and effect and has not been modified except as described in such statement, (ii) the date to which interest and principal on the Note has been paid, (iii) the Principal Balance, (iv) whether or not to its knowledge an Incipient Default or Event of Default has occurred and is continuing, and, if so, specifying in reasonable detail each such Incipient Default or Event of Default of which it has knowledge, (v) whether to its knowledge it has any defense, set off or counterclaim to the payment of the Note in accordance with its terms, and, if so, specifying each defense, set off or counterclaim of which it has knowledge in reasonable detail (including where applicable the amount thereof), and (vi) as to any other matter reasonably requested by Lender.

**1.53** Consequential Damages.

Neither Lender nor any attorney of Lender shall be liable to Borrower for consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Borrower's Obligations.

**1.54** Counterparts.

This Loan Agreement may be executed by the parties hereto in several counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same agreement.

**1.55** No Fiduciary Relationship.

No provision in this Loan Agreement or in any other Loan Instrument, and no course of dealing among the parties hereto, shall be deemed to create any fiduciary duty by Lender to Borrower or Guarantor.

**1.56** Notice of Breach by Lender.

Borrower and Guarantor agree to give Lender written notice of (i) any action or inaction by Lender or any attorney of Lender in connection with the Loan Instruments that may be actionable against Lender or any attorney of Lender or (ii) any defense to the payment of Borrower's Obligations for any reason, including, but not limited to, commission of a tort or violation of any contractual duty implied by law. Borrower and Guarantor agree that unless such notice is fully given as promptly as possible (but in any event within 30 days) after Borrower or Guarantor has knowledge, or with the exercise of reasonable diligence should have had knowledge, of any such action, inaction or defense, Borrower and Guarantor shall not assert, and shall be deemed to have waived, any claim or defense arising therefrom.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Loan Agreement has been executed and delivered by each of the parties hereto by a duly authorized officer of each such party on the date first set forth above.

**CAROLINA NATIONAL TRANSPORTATION INC.**, an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GULF LINE TRANSPORT INC.**,  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FIVE STAR TRANSPORT, INC.**,  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CAM TRANSPORT, INC.**,  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UNITY LOGISTIC SERVICES INC.,**  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ERX, INC.,** an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FRIENDLY TRANSPORT, INC.,**  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TRANSPORT LEASING, INC.,**  
an Arkansas corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**HARBOR BRIDGE INTERMODAL, INC.,**  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PATRIOT LOGISTICS, INC.,**  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LIBERTY TRANSPORT, INC.,**  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**KEYSTONE LINES CORPORATION,**  
an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**US 1 INDUSTRIES, INC.**, an Indiana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**,  
a national banking association

By: \_\_\_\_\_

Name: Craig B. Collinson  
Title: Senior Vice President

## SUBSIDIARIES OF US 1 INDUSTRIES, INC.

There are no parents of the Registrant.

Registrant's consolidated subsidiaries are shown below together with the state or jurisdiction of organization of each subsidiary, the date of incorporation, and the names under which such subsidiaries do business.

<u>NAME OF SUBSIDIARY</u>	<u>STATE OF INCORPORATION</u>	<u>DATE OF INCORPORATION</u>
AccuScan Testing, Inc.	Indiana	7/14/1998
Antler Transport	Indiana	05/16/2001
Blue and Grey Transport Company, Inc.	Indiana	12/16/1985
Blue and Grey Brokerage, Inc.	Indiana	6/11/1991
Carolina National Logistics, Inc.	Indiana	9/11/1996
Carolina National Transportation, Inc.	Indiana	1/12/1995
Friendly Transport, Inc.	Indiana	3/01/2001
Five Star Transport, Inc.	Indiana	1/25/1983
Keystone Logistics, Inc.	Indiana	9/11/1996
Unity Logistic Services, Inc.	Indiana	6/08/2000
Gulf Line Brokerage, Inc.	Indiana	9/09/1994
Gulf Line Transport, Inc.	Indiana	9/09/1994
Keystone Lines, Inc.	California	7/22/1980
Keystone Lines	Indiana	2/18/1999
Cam Transport, Inc.	Indiana	10/10/2000
Transport Leasing, Inc.	Arkansas	6/02/2000
Harbor Bridge Intermodal, Inc.	Indiana	3/20/2000
Patriot Logistics, Inc.	Indiana	7/29/2002
TC Services, Inc.	California	7/22/1980
TC Administrative Services, Inc.	Indiana	2/18/1999

**Certification Pursuant to § 302 of the Sarbanes-Oxley Act of 2002**

I, Michael E. Kibler, certify that:

1. I have reviewed this annual report on Form 10-K of US 1 Industries, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2005

/s/ Michael E. Kibler

Michael E. Kibler  
Chief Executive Officer

**Certification Pursuant to § 302 of the Sarbanes-Oxley Act of 2002**

I, Harold E. Antonson, certify that:

1. I have reviewed this annual report on Form 10-K of US 1 Industries, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2005

/s/ Harold E. Antonson

Harold E. Antonson  
Chief Financial Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

**Pursuant to § 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350)**

I, Michael E. Kibler, as the President and Chief Executive Officer of US 1 Industries, Inc., certify that, to the best of my knowledge and belief, the Annual Report on Form 10-K for the year ended December 31, 2004, which accompanies this certification fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of US 1 Industries, Inc. at the dates and for the periods indicated. The foregoing certification is made pursuant to § 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350) and shall not be relied upon for any other purpose. The undersigned expressly disclaims any obligation to update the foregoing certification except as required by law.

Dated this 11th day of March 2005.

/s/ Michael E. Kibler  
Michael E. Kibler  
Chief Executive Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to US 1 Industries, Inc. and will be retained by US 1 Industries, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

**Pursuant to § 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350)**

I, Harold E. Antonson, as the Executive Vice President and Chief Financial Officer of US 1 Industries, Inc., certify that, to the best of my knowledge and belief, the Annual Report on Form 10-K for the year ended December 31, 2004, which accompanies this certification fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of US 1 Industries, Inc. at the dates and for the periods indicated. The foregoing certification is made pursuant to § 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350) and shall not be relied upon for any other purpose. The undersigned expressly disclaims any obligation to update the foregoing certification except as required by law.

Dated this 11th day of March 2005.

/s/ Harold E. Antonson  
Harold E. Antonson  
Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to US 1 Industries, Inc. and will be retained by US 1 Industries, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.