

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

FORM 8-K  
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report:

September 27, 2007

(Date of earliest event reported)

SPECTRUM BRANDS, INC.

(Exact Name of Registrant as Specified in  
Charter)

Wisconsin

(State or other Jurisdiction of  
Incorporation)

001-13615

(Commission File No.)

22-2423556

(IRS Employer Identification No.)

Six Concourse Parkway, Suite 3300, Atlanta, Georgia 30328

(Address of principal executive offices, including zip code)

(770) 829-6200

(Registrant's telephone number, including area code)

N/A

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

### **ITEM 2.03. CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF THE REGISTRANT**

On June 21, 2007, the Spectrum Brands, Inc. (the “Company”) publicly disclosed that it had received a financing commitment from Goldman Sachs Credit Partners L.P. (“GSCP”) and Wachovia Bank, National Association (“Wachovia”), for an asset based loan facility. On September 28, 2007, the Company entered into the asset-based revolving loan facility (the “ABL Credit Facility”) pursuant to a credit agreement among the Company, certain subsidiaries of the Company party thereto, Wachovia, as the administrative agent, the collateral agent and a letter of credit issuer, GSCP, as the syndication agent, and the lenders party thereto (the “ABL Credit Agreement”).

The ABL Credit Facility replaces a portion of the Company’s term loan facility under its credit agreement dated as of March 30, 2007, among the Company, GSCP, as administrative agent, and the lenders and other financial institutions party thereto (such credit agreement, the “Senior Credit Agreement”) (such term loan facility, the “Senior Credit Facility”). The ABL Credit Agreement provides for initial aggregate lender commitments of \$225 million, with \$60 million and \$30 million sublimits for a letter of credit facility (the “Letter of Credit Facility”) and swingline loans, respectively, provided that the ABL Credit Agreement limits aggregate borrowing availability at any time to (i) the lesser of the aggregate lender commitments at such time, the borrowing base at such time and the Facility Reduction Amount (as defined in the Senior Credit Agreement) at such time minus (ii) \$25 million, subject to further limitations for reserves, overadvance limits and the aggregate outstanding amount of any special agent loans described below. The proceeds of borrowings under the ABL Credit Facility may be used to repay amounts outstanding under the Senior Credit Facility, to pay fees and expenses related to the ABL Credit Facility and for working capital and other general corporate purposes. Letters of credit issued under the Letter of Credit Facility may be used solely to support ordinary course obligations of the Company and its subsidiaries. The ABL Credit Facility has a maturity date of September 28, 2011.

After the occurrence and during the continuance of a default under the ABL Credit Agreement, the administrative agent may, subject to borrowing availability and in the administrative agent’s discretion, make special agent loans that are necessary or desirable (i) to preserve or protect any collateral under the ABL Credit Facility, (ii) to enhance the likelihood of, or to maximize the amount of, repayment by the loan parties of the loans and other obligations under the ABL Credit Facility or (iii) to pay any costs, fees and expenses, or any amounts due to any letter of credit issuer with respect to letters of credit issued by such issuer under the Letter of Credit Facility.

The interest and fees per annum under the ABL Credit Facility are calculated on a 365-day (or 366-day, as the case may be) basis for Base Rate (as defined below) loans when the Base Rate is determined by reference to the Prime Rate (as defined below). All other computations of interest and fees are calculated on the basis of a 360-day year and actual days elapsed. Base rate (“Base Rate”) interest is an alternate base rate equal to the greater of (i) the prime rate, as defined in the ABL Credit Agreement (the “Prime Rate”), and (ii) the federal funds effective rate in effect on such day published by the Federal Reserve Bank in New York plus 0.5%. Interest will accrue at a reserve-adjusted LIBOR rate for a specified interest period plus a margin rate of 2.25% per annum or the Base Rate plus a margin rate of 1.25% per annum.

The Company is required to pay a quarterly unused commitment fee and customary fees to the administrative agent. Pursuant to the Letter of Credit Facility, the Company is also required to pay quarterly participation and fronting fees based on the amount of the letter of credit deposits and the letter of credit exposures, respectively, of the applicable lenders.

The ABL Credit Agreement permits voluntary prepayments of amounts borrowed. In addition, the Company will be required to prepay amounts borrowed under the ABL Credit Facility in the event that aggregate borrowings under the ABL Credit Facility exceed the maximum borrowing availability or in connection with certain asset sales.

The ABL Credit Agreement subjects the Company to certain customary obligations, including the delivery of financial statements and reports in respect of the collateral supporting the obligations under the ABL Credit Facility. In addition, the ABL Credit Agreement contains customary restrictive covenants, including, but not limited to, restrictions on the Company’s ability to incur additional indebtedness, create liens, make investments, give guarantees, pay dividends, and merge.

The ABL Credit Facility also contains customary events of default, including, but not limited to, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults under material indebtedness or swap contracts, certain events of bankruptcy and insolvency, judgment defaults, failure of any loan document to be in full force and effect, change of control and ERISA defaults. If an event of default occurs and is continuing, amounts due under the ABL Credit Facility may be accelerated and the rights and remedies of the lenders under the ABL Credit Facility available under the applicable loan documents may be exercised, including rights with respect to the collateral securing obligations under the ABL Credit Facility.

The ABL Credit Facility is secured by certain of the Company’s liquid assets, including, among other things, accounts receivable and deposit accounts (collectively, the “ABL Collateral”), and the obligations under the ABL Credit Facility are guaranteed pursuant to a guarantee and collateral agreement (the “Guarantee and Collateral Agreement”) made by the Company, certain of its subsidiaries and Wachovia, as collateral agent, on September 28, 2007.

In connection with entering into the ABL Credit Facility, the Company also entered into an intercreditor agreement dated as of September 28, 2007, among the Company, certain subsidiaries of the Company party thereto, GSCP, as collateral agent under the Senior Credit Facility, and Wachovia, as collateral agent under the ABL Credit Facility (the “Intercreditor Agreement”). Under the Intercreditor Agreement, GSCP and Wachovia, on behalf of the secured parties under the respective facilities, have agreed that the liens on the ABL Collateral granted pursuant to the Guarantee and Collateral Agreement shall be senior to the liens on such collateral granted with respect to the Senior Credit Facility, subject to certain exceptions in respect of excess amounts under the ABL Credit Facility. The Intercreditor Agreement further provides, among other things, for enforcement remedies and the application of proceeds in respect of such collateral.

Also on September 28, 2007, the Company prepaid \$200 million of the outstanding principal amount under the Senior Credit Facility from its net working capital, providing the Company with aggregate borrowing availability of approximately \$170.8 million under the ABL Credit Facility. As of September 28, 2007, the Company had not made any borrowings under the ABL Credit Facility.

Copies of the ABL Credit Facility, the Guarantee and Collateral Agreement and the Intercreditor Agreement are attached hereto as Exhibits 10.1, 10.2 and 10.3, respectively, and are incorporated herein by reference. The foregoing descriptions of the ABL Credit Facility, Guarantee and Collateral Agreement and Intercreditor Agreement are qualified in their entirety by reference to the full text of the respective agreements.

A copy of the press release announcing the closing of the ABL Credit Facility is attached as Exhibit 99.1 to this Current Report on Form 8-K.

#### *Certain Relationships*

GSCP and its respective affiliates have performed certain investment banking and advisory services and general banking and financing services for the Company from time to time for which they have received customary fees and expenses. GSCP is the administrative agent and a lender under the Company’s Senior Credit Facility. GSCP and its affiliates may, from time to time in the future, engage in transactions with and perform services for the Company in the ordinary course of their business for which they will receive customary fees or expenses. In addition, certain affiliates of Wachovia have performed certain investment advisory services for the Company from time to time for which they have received customary fees and expenses.

#### **ITEM 5.02. AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR**

On September 27, 2007, Spectrum Brands, Inc. (the “Company”) made a filing with the State of Wisconsin, the Company's jurisdiction of incorporation, to effect a change in the Company’s registered agent. This filing amends the Company’s amended and restated articles of incorporation to replace the outgoing registered agent with the new registered agent. There were no other changes to the Company’s articles of incorporation.

**Item 9.01. FINANCIAL STATEMENTS AND EXHIBITS**

(d) Exhibits

- 3.1 Articles of Amendment to the Amended and Restated Articles of Incorporation.
- 10.1 Credit Agreement dated as of September 28, 2007, among the Company, certain subsidiaries of the Company party thereto, Wachovia Bank, National Association, as administrative agent, and the other parties and financial institutions party thereto.
- 10.2 ABL Guarantee and Collateral Agreement dated as of September 28, 2008, among the Company, certain subsidiaries of the Company party thereto, and Wachovia Bank, National Association, as collateral agent.
- 10.3 Intercreditor agreement dated as of September 28, 2007, among the Company, certain subsidiaries of the Company party thereto, Goldman Sachs Credit Partners L.P. and Wachovia Bank, National Association.
- 99.1 Press Release dated October 1, 2007 issued by Spectrum Brands, Inc.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 1, 2007

SPECTRUM BRANDS, INC.

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Senior Vice President, Chief  
Financial Officer and Chief  
Accounting Officer

---

## EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
3.1	Articles of Amendment to the Amended and Restated Articles of Incorporation.
10.1	Credit Agreement dated as of September 28, 2007, among the Company, certain subsidiaries of the Company party thereto, Wachovia Bank, National Association, as administrative agent, and the other parties and financial institutions party thereto.
10.2	ABL Guarantee and Collateral Agreement dated as of September 28, 2007, among the Company, certain subsidiaries of the Company party thereto, and Wachovia Bank, National Association, as collateral agent.
10.3	Intercreditor agreement dated as of September 28, 2007, among the Company, certain subsidiaries of the Company party thereto, Goldman Sachs Credit Partners L.P. and Wachovia Bank, National Association.
99.1	Press Release dated October 1, 2007 issued by Spectrum Brands, Inc.

---

Sec. 180.1006  
Wis. Stats.

State of Wisconsin  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Corporate & Consumer Services

**ARTICLES OF AMENDMENT – STOCK, FOR-PROFIT CORPORATION**

A. The present corporate name (prior to any change effected by this amendment) is:

**Spectrum Brands, Inc.**

(Enter Corporate Name)

*Text of Amendment (Refer to the existing articles of incorporation and the instructions on the reverse of this form. Determine those items to be changed and set forth the number identifying the paragraph in the articles of incorporation being changed and how the amended paragraph is to read.)*

RESOLVED, THAT the articles of incorporation be amended as follows:

To amend Article X of the Company’s articles of incorporation to replace "David A. Jones" with "David R. Lumley" as the name of the Company's registered agent.

**FILING FEE - \$40.00** See instructions, suggestions and procedures on following pages.

DFI/CORP/4(R02/05/04) Use of this form is voluntary.



B. Amendment(s) adopted on September 26, 2007

(Indicate the method of adoption by checking (X) the appropriate choice below.)

In accordance with sec. 180.1002, Wis. Stats. (By the Board of Directors)

OR

In accordance with sec. 180.1003, Wis. Stats. (By the Board of Directors and Shareholders)

OR

In accordance with sec. 180.1005, Wis. Stats. (By Incorporators or Board of Directors, before issuance of shares)

C. Executed on September 27, 2007  
(Date)

/s/ Tracy Staidl Wrycha  
(Signature)

Title:  President  Secretary  
or other officer title Assistant Secretary

Tracy Staidl Wrycha  
(Printed name)

This document was drafted by Tracy Staidl Wrycha  
(Name the individual who drafted the document)

**INSTRUCTIONS** (Ref. sec. 180.1006 Wis. Stats. for document content)

Submit one original and one exact copy to Dept. of Financial Institutions, P O Box 7846, Madison WI, 53707-7846, together with a **FILING FEE of \$40.00** payable to the department. Filing fee is **non-refundable**. (If sent by Express or Priority U.S. mail, address to 345 W. Washington Ave., 3<sup>rd</sup> Floor, Madison WI, 53703). The original must include an original manual signature, per sec. 180.0120(3)(c), Wis. Stats. **NOTICE:** This form may be used to accomplish a filing required or permitted by statute to be made with the department. Information requested may be used for secondary purposes. If you have any questions, please contact the Division of Corporate & Consumer Services at 608-261-7577. Hearing-impaired may call 608-266-8818 for TDY.



## ARTICLES OF AMENDMENT – Stock, For-Profit Corporation

John T. Wilson  
 Vice President, Secretary and General Counsel  
 Spectrum Brands, Inc.  
 Six Concourse Parkway  
 Suite 3300  
 Atlanta, GA 30328

▲ Your **return address** and **phone number** during the day: (770 ) 829 - 6240 \_\_\_\_\_

INSTRUCTIONS (Continued)

- A. State the name of the corporation (before any change effected by this amendment) and the text of the amendment(s). The text should recite the resolution adopted (e.g., “Resolved, that Article 1 of the articles of incorporation be amended to read: . . . . . (enter the amended article). If an amendment provides for an exchange, reclassification or cancellation of issued shares, state the provisions for implementing the amendment if not contained in the amendment itself.
- B. Enter the date of adoption of the amendment(s). If there is more than one amendment, identify the date of adoption of each. Mark (X) one of the three choices to indicate the method of adoption of the amendment(s).

By Board of Directors – Refer to sec. 180.1002 for specific information on the character of amendments that may be adopted by the Board of Directors without shareholder action.

By Board of Directors and Shareholders – Amendments proposed by the Board of Directors and adopted by shareholder approval. Voting requirements differ with circumstances and provisions in the articles of incorporation. See sec. 180.1003, Wis. Stats., for specific information.

By Incorporators or Board of Directors – Before issuance of shares – See sec. 180.1005, Wis. Stats., for conditions attached to the adoption of an amendment approved by a vote or consent of less than 2/3rds of the shares subscribed for.

- C. Enter the date of execution and the name and title of the person signing the document. The document must be signed by one of the following: An **officer** of the corporation (or incorporator if directors have not been elected), or a court-appointed receiver, trustee or fiduciary. A director is **not** empowered to sign.

If the document is executed in Wisconsin, sec. 182.01(3) provides that it shall not be filed unless the name of the person (individual) who drafted it is printed, typewritten or stamped thereon in a legible manner. If the document is not executed in Wisconsin, enter that remark.

**FILING FEE - \$40.00.**

DFI/CORP/4I(R02/05/04)

;

CREDIT AGREEMENT

dated as of September 28, 2007,

among

SPECTRUM BRANDS, INC.,

as the Borrower,

the Subsidiaries of the Borrower party hereto,

WACHOVIA BANK, NATIONAL ASSOCIATION,

as the Administrative Agent, the Collateral Agent and an LC Issuer,

GOLDMAN SACHS CREDIT PARTNERS L.P.,

as the Syndication Agent,

and

the LENDERS Party Hereto

---

GOLDMAN SACHS CREDIT PARTNERS L.P.,

Joint Lead Arranger and Sole Bookrunner

WACHOVIA CAPITAL MARKETS LLC,

Joint Lead Arranger

BANK OF AMERICA, N.A.,

GENERAL ELECTRIC CAPITAL CORPORATION

and

WELLS FARGO FOOTHILL, LLC,

Documentation Agents

---

---

# TABLE OF CONTENTS

Page

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

<a href="#">Section 1.01. Defined Terms</a>	1
<a href="#">Section 1.02. Other Interpretive Provisions</a>	32
<a href="#">Section 1.03. Accounting Terms</a>	32
<a href="#">Section 1.04. Times of Day</a>	33
<a href="#">Section 1.05. Currency Equivalents Generally</a>	33
<a href="#">Section 1.06. Designation as Senior Debt</a>	33

## ARTICLE II

### THE COMMITMENTS AND CREDIT EXTENSIONS

<a href="#">Section 2.01. Commitments</a>	33
<a href="#">Section 2.02. Borrowings, Conversions and Continuations of Revolving Loans</a>	34
<a href="#">Section 2.03. Letters of Credit</a>	35
<a href="#">Section 2.04. Swingline Loans</a>	40
<a href="#">Section 2.05. Special Agent Loans</a>	41
<a href="#">Section 2.06. Prepayments</a>	42
<a href="#">Section 2.07. Termination, Reduction and Increase of Commitments</a>	44
<a href="#">Section 2.08. Repayment of Loans</a>	46
<a href="#">Section 2.09. Interest</a>	46
<a href="#">Section 2.10. Fees</a>	47
<a href="#">Section 2.11. Computation of Interest and Fees</a>	48
<a href="#">Section 2.12. Evidence of Indebtedness</a>	48
<a href="#">Section 2.13. Payments Generally; Administrative Agent's Clawback; Administrative Agent's Authority to Request Borrowings; Miscellaneous</a>	48
<a href="#">Section 2.14. Sharing of Payments by Lenders</a>	50
<a href="#">Section 2.15. Concerning the Designated Subsidiaries</a>	51

## ARTICLE III

### TAXES, YIELD PROTECTION AND ILLEGALITY

<a href="#">Section 3.01. Taxes</a>	52
<a href="#">Section 3.02. Illegality</a>	54
<a href="#">Section 3.03. Inability to Determine Rates</a>	55
<a href="#">Section 3.04. Increased Costs; Reserves on Eurodollar Rate Loans</a>	55
<a href="#">Section 3.05. Compensation for Losses</a>	56
<a href="#">Section 3.06. Mitigation Obligations; Replacement of Lenders</a>	57
<a href="#">Section 3.07. Survival</a>	58

ARTICLE IV

CONDITIONS PRECEDENT

<a href="#">Section 4.01. Conditions Precedent to Effectiveness</a>	58
<a href="#">Section 4.02. Conditions Precedent to Each Credit Extension</a>	60

ARTICLE V

REPRESENTATIONS AND WARRANTIES

<a href="#">Section 5.01. Existence, Qualification and Power; Compliance with Laws</a>	61
<a href="#">Section 5.02. Authorization; No Contravention</a>	61
<a href="#">Section 5.03. Governmental Authorization; Other Consents</a>	61
<a href="#">Section 5.04. Binding Effect</a>	62
<a href="#">Section 5.05. Financial Statements; No Material Adverse Effect</a>	62
<a href="#">Section 5.06. Litigation</a>	62
<a href="#">Section 5.07. No Default</a>	63
<a href="#">Section 5.08. Ownership of Property</a>	63
<a href="#">Section 5.09. Environmental Compliance</a>	63
<a href="#">Section 5.10. Insurance</a>	64
<a href="#">Section 5.11. Taxes</a>	64
<a href="#">Section 5.12. ERISA Compliance</a>	64
<a href="#">Section 5.13. Subsidiaries; Equity Interests</a>	65
<a href="#">Section 5.14. Margin Regulations; Investment Company Act</a>	65
<a href="#">Section 5.15. Disclosure</a>	65
<a href="#">Section 5.16. Intellectual Property; Licenses, Etc</a>	66
<a href="#">Section 5.17. Solvency</a>	66
<a href="#">Section 5.18. Senior Debt Status</a>	66
<a href="#">Section 5.19. Certain Accounts</a>	66

ARTICLE VI

AFFIRMATIVE COVENANTS

<a href="#">Section 6.01. Financial Statements</a>	67
<a href="#">Section 6.02. Certificates; Other Information</a>	68
<a href="#">Section 6.03. Notices</a>	69
<a href="#">Section 6.04. Nonpublic Information</a>	69
<a href="#">Section 6.05. Payment of Obligations</a>	69
<a href="#">Section 6.06. Preservation of Existence, Etc</a>	70
<a href="#">Section 6.07. Maintenance of Properties</a>	70
<a href="#">Section 6.08. Maintenance of Insurance</a>	70
<a href="#">Section 6.09. Compliance with Laws</a>	70
<a href="#">Section 6.10. Books and Records</a>	70
<a href="#">Section 6.11. Inspection Rights</a>	71
<a href="#">Section 6.12. Use of Proceeds</a>	71
<a href="#">Section 6.13. Information Regarding the ABL Collateral; Additional Subsidiaries</a>	71
<a href="#">Section 6.14. Compliance with Environmental Laws</a>	72

<a href="#">Section 6.15. Further Assurances</a>	72
<a href="#">Section 6.16. Certain Post-Closing Collateral Obligations</a>	72
<a href="#">Section 6.17. Collateral Reporting</a>	72
<a href="#">Section 6.18. Evaluations of the Borrowing Base and Related Assets</a>	73

## ARTICLE VII

### NEGATIVE COVENANTS

<a href="#">Section 7.01. Liens</a>	74
<a href="#">Section 7.02. Indebtedness</a>	76
<a href="#">Section 7.03. Investments</a>	78
<a href="#">Section 7.04. Fundamental Changes</a>	81
<a href="#">Section 7.05. Dispositions</a>	81
<a href="#">Section 7.06. Restricted Payments</a>	83
<a href="#">Section 7.07. Change in Nature of Business</a>	83
<a href="#">Section 7.08. Transactions with Affiliates</a>	83
<a href="#">Section 7.09. Burdensome Agreements</a>	84
<a href="#">Section 7.10. Use of Proceeds</a>	84
<a href="#">Section 7.11. Amendment of Certain Documents</a>	84
<a href="#">Section 7.12. Accounting Changes</a>	85
<a href="#">Section 7.13. Prepayments, Etc</a>	85
<a href="#">Section 7.14. Speculative Transactions</a>	85
<a href="#">Section 7.15. Senior Debt Status</a>	85

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

<a href="#">Section 8.01. Events of Default</a>	85
<a href="#">Section 8.02. Remedies Upon Event of Default</a>	88

## ARTICLE IX

### ADMINISTRATIVE AGENT

<a href="#">Section 9.01. Appointment of Agents</a>	88
<a href="#">Section 9.02. Powers and Duties</a>	89
<a href="#">Section 9.03. General Immunity</a>	89
<a href="#">Section 9.04. Agents Entitled to Act as Lender</a>	90
<a href="#">Section 9.05. Lenders' Representations, Warranties and Acknowledgments</a>	90
<a href="#">Section 9.06. Right to Indemnity</a>	91
<a href="#">Section 9.07. Successor Agents</a>	91
<a href="#">Section 9.08. Collateral Documents and Related Collateral Matters</a>	92
<a href="#">Section 9.09. No Arranger Duties</a>	94

ARTICLE X

MISCELLANEOUS

<a href="#">Section 10.01. Amendments, Waivers, Etc</a>	94
<a href="#">Section 10.02. Notices and Other Communications</a>	96
<a href="#">Section 10.03. No Waiver; Cumulative Remedies</a>	98
<a href="#">Section 10.04. Expenses; Indemnity; Damage Waiver</a>	98
<a href="#">Section 10.05. Payments Set Aside</a>	99
<a href="#">Section 10.06. Successors and Assigns</a>	100
<a href="#">Section 10.07. Confidentiality</a>	103
<a href="#">Section 10.08. Right of Setoff</a>	103
<a href="#">Section 10.09. Counterparts; Effectiveness; Integration</a>	104
<a href="#">Section 10.10. Survival of Representations and Warranties</a>	104
<a href="#">Section 10.11. Severability</a>	104
<a href="#">Section 10.12. Replacement of Lenders</a>	105
<a href="#">Section 10.13. Governing Law; Jurisdiction; Etc</a>	105
<a href="#">Section 10.14. WAIVER OF JURY TRIAL</a>	106
<a href="#">Section 10.15. Patriot Act</a>	107
<a href="#">Section 10.16. Concerning the ABL Intercreditor Agreement</a>	107
<a href="#">Section 10.17. Joint and Several Liability of Loan Parties</a>	107

## SCHEDULES

1.1(a)	Initial Designated Subsidiaries
1.01(b)	Specified Account Debtors
2.01	Commitments and Applicable Percentages
5.06	Litigation
5.09	Environmental Matters
5.13	Subsidiaries; Other Equity Interests
5.16	Intellectual Property Claims
7.01(b)	Existing Permitted Liens
7.02(h)	Existing Permitted Indebtedness
7.03(f)	Existing Permitted Investments
7.05	Certain Dispositions
7.08	Certain Transactions with Affiliates
7.09	Certain Existing Restrictions
10.02	Administrative Agent's Office, Certain Addresses for Notices

## EXHIBITS

A	Form of ABL Guarantee and Collateral Agreement
B	Form of ABL Facility Intercreditor Agreement
C	Form of Assignment and Assumption
D	Form of Borrowing Base Certificate
E	Form of Committed Loan Notice
F	Form of Compliance Certificate
G	Subordination Terms of Certain Intercompany Indebtedness



This CREDIT AGREEMENT (this “*Agreement*”) is entered into as of September 28, 2007, among Spectrum Brands, Inc., a Wisconsin corporation (the “*Borrower*”); the Subsidiaries of the Borrower party hereto; Wachovia Bank, National Association (“*Wachovia*”), as the Administrative Agent, the Collateral Agent and an LC Issuer; Goldman Sachs Credit Partners L.P. (“*GSCP*”), as the Syndication Agent; and the Lenders (as defined below) from time to time party hereto.

The parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“*2013 New Indenture*” means the Indenture, dated as of March 30, 2007, among the Borrower, the guarantors named therein and Wells Fargo Bank, N.A. as trustee.

“*2013 New Notes*” means the Variable Rate Toggle Senior Subordinated Notes due 2013 issued pursuant to the 2013 New Indenture.

“*2013 Original Indenture*” means the Indenture, dated as of September 30, 2003, among the Borrower, the guarantors named therein and U.S. Bank National Association, as trustee, as heretofore supplemented (including by the Fifth Supplemental Indenture thereto dated as of March 29, 2007).

“*2013 Original Notes*” means the 8-1/2% Senior Subordinated Notes of the Borrower due 2013, issued pursuant to the 2013 Original Indenture.

“*2015 Indenture*” means the Indenture, dated as of February 7, 2005, among the Borrower, the guarantors named therein and U.S. Bank National Association, as trustee.

“*2015 Notes*” means the 7-3/8% Senior Subordinated Notes of the Borrower due 2015, issued pursuant to the 2015 Indenture.

“*ABL Collateral*” has the meaning specified in the ABL Guarantee and Collateral Agreement.

“*ABL Guarantee and Collateral Agreement*” means the ABL Guarantee and Collateral Agreement among the Borrower, the Subsidiary Loan Parties and the Collateral Agent, substantially in the form of Exhibit A hereto.

“*ABL Intercreditor Agreement*” means the Intercreditor Agreement among the Administrative Agent, the administrative agent under the Term Credit Agreement and the Borrower, substantially in the form of Exhibit B hereto.

“*Acceptable Bank*” has the meaning specified in the definition of “Cash Equivalents”.

---

“**Accession Agreement**” has the meaning specified in Section 2.07(d).

“**account debtor**” means any Person obligated on an Account.

“**Accounts**” means, as to the Borrower or any Designated Subsidiary, all present and future rights of the Borrower or such Designated Subsidiary to payment of a monetary obligation, whether or not earned by performance, that is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred or (d) arising out of the use of a credit or charge card or information contained on or for use with the card.

“**Accounts Borrowing Base Availability**” means, at any time, the Borrowing Base at such time, minus any amount thereof attributable to Eligible Inventory.

“**Accrued Right to Offset Accounts**” means all accrued rebates, co-op allowances, slotting fees, trade allowances and other accrued allowances or rebates.

“**Acquisition**” means any transaction or series of related transactions by the Borrower or its Subsidiaries for the purpose of, or resulting directly or indirectly in, (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of more than 50% of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary or (c) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary).

“**Administrative Agent**” means Wachovia, in its capacity as the administrative agent under this Agreement, or any successor administrative agent.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, account set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agents**” means, collectively, the Administrative Agent, the Collateral Agent and the Syndication Agent.

“**Agreement**” means this Credit Agreement.

---

“Applicable Percentage” means, as to any Lender, the percentage (carried out to the ninth decimal place) of the aggregate Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentage shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“**Applicable Rate**” means (a) in the case of Eurodollar Rate Loans, 2.25% per annum and (b) in the case of Base Rate Loans, 1.25% per annum.

“**Approved Electronic Communications**” means any notice, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein that is distributed to the Lenders and the LC Issuers by means of electronic communications pursuant to Section 10.02(b).

“**Arrangers**” means GSCP, in its capacity as joint lead arranger and sole bookrunner for the Facility, and Wachovia Capital Markets LLC, in its capacity as joint lead arranger for the Facility.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required under Section 10.06(d)), and accepted by the Administrative Agent, substantially in the form of Exhibit C or any other form approved by the Administrative Agent.

“**Assignment Effective Date**” has the meaning specified in Section 10.06(c).

“**Attributable Indebtedness**” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount of the remaining lease thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person as of such date.

“**Availability Block**” means \$25,000,000.

“**Availability Period**” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

“**Availability Triggering Event**” means that the unused availability under the Borrowing Base shall have been less than \$50,000,000 (without giving effect to the Availability Block) for five consecutive Business Days. An Availability Triggering Event shall be deemed to be continuing until such time as such unused availability is greater than \$50,000,000 (without giving effect to the Availability Block) for 60 consecutive days.

“**Base Rate**” means, for any day, a fluctuating rate per annum equal to the higher of (a) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (b) the Prime Rate in effect on such day. Any change in the Base Rate due to a change in the Federal Funds Rate or the Prime Rate shall be effective on the effective day of such change in the Federal Funds Rate or the Prime Rate, respectively.

---

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Borrower**” has the meaning specified in the introductory paragraph hereto.

“**Borrowing**” means (a) a Revolving Borrowing, (b) a Swingline Loan or (c) a Special Agent Loan.

“**Borrowing Base**” means, at any time, (a) the sum of (i) 85% of the Eligible Accounts of the Borrower and the Designated Subsidiaries, minus the Dilution Reserve, and (ii) the lesser of (A) 65% of the Value of the Eligible Inventory of the Borrower and the Designated Subsidiaries and (B) 85% of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory, minus, without duplication, (b) the Other Reserves (other than (except for purposes of Section 2.06(b)(i)), the Specified Reserves) in effect at such time. The Borrowing Base in effect at any time shall be reasonably determined by the Administrative Agent, based on the Borrowing Base Certificate most recently delivered by the Borrower prior to such time pursuant to Section 2.15(a), 4.01(a)(xi) or 6.17(a), but subject to (x) any adjustments thereto as a result of any Designated Subsidiary ceasing to be such as provided in Section 2.15(b) or the consummation of any Disposition and (y) the Other Reserves established by the Administrative Agent.

“**Borrowing Base Certificate**” means a certificate of the Borrower substantially in the form of Exhibit D (with such changes thereto as may be reasonably requested by the Administrative Agent from time to time to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time).

“**Business Day**” means any day other than (a) a Saturday, Sunday or other day on which commercial banks in New York are authorized to close under the Laws of the State of New York or are in fact closed in the State where the Administrative Agent’s Office is located and (b) if such day relates to a Eurodollar Rate Loan, a day on which banks are not open for general business in London.

“**Capitalized Leases**” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“**Cash Collateral Account**” means a blocked deposit account of the Borrower at a commercial bank that is in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent and in which the Administrative Agent has a perfected security interest, all in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Equivalents**” means any of the following types of Investments:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States, an OECD Member, any member of the European Economic Union or any agency or instrumentality thereof having maturities of not more than 365 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America, such OECD Member or such member of the European Economic Union is pledged in support thereof;

---

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (each such bank, an "**Acceptable Bank**") (i) (A) is a Lender, (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System or (C) is a member of the applicable central bank of any OECD Member or any member of the European Economic Union, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$250,000,000 (or the equivalent in the applicable currency), in each case with maturities of not more than 365 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States or the District of Columbia, any member state of the European Economic Union or any OECD Member or any Acceptable Bank and rated at least "Prime-1" (or the then equivalent grade) by Moody's or Fitch or at least "A-1" (or the then equivalent grade) by S&P, or guaranteed by any industrial company with long-term unsecured debt rating (at the time of investment) of at least Aa by Moody's or Fitch or at least AA by S&P, in each case with maturities of not more than 365 days from the date of acquisition thereof;

(d) investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs that are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition;

(e) repurchase agreements with any Lender or any primary dealer maturing within 365 days from the date of investment that are fully collateralized by investment instruments that would otherwise be Cash Equivalents; provided that the terms of such repurchase agreements comply with the guidelines set forth in the Federal Financial Institutions Examination Council Supervisory Policy — Repurchase Agreements of Depository Institutions With Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985;

(f) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialized equivalents);

(g) any other debt security approved by the Required Lenders; and

(h) any investment made by a Foreign Subsidiary in its jurisdiction of organization that is of character, credit quality and maturity similar to one of the investments described in clauses (a) through (f) above.

"**Casualty Event**" means any casualty or other insured damage to, or any taking under any power of eminent domain or condemnation or similar proceeding of, any assets of the Borrower or any of its Subsidiaries.

---

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

“**CERCLIS**” means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the U.S. Environmental Protection Agency.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law, (b) any change in any Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“**Change of Control**” means, an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than THLee or any group of which THLee is a member becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire (such right, an “*option right*”), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 40% or more of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Equity Interests of the Borrower;

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower ceases to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of clauses (ii) and (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(c) the occurrence of a “Change of Control” (or a similar event, however denominated) under, and as defined in, any Indenture or any agreement, instrument or document governing or evidencing any Material Indebtedness of the Borrower that refinanced Indebtedness under any Indenture (in each case, after giving effect to any applicable grace period).

“**Closing Date**” means the first date on which all of the conditions precedent set forth in Section 4.01 are satisfied or waived in accordance with Section 10.01.

---

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

“**Collateral Access Agreement**” means an agreement, in form and substance reasonably satisfactory to the Collateral Agent, from any lessor of premises to any Loan Party, or any other Person to whom any ABL Collateral is consigned or who has custody, control or possession of any ABL Collateral or is otherwise the owner or operator of any premises on which any ABL Collateral is located, in favor of the Collateral Agent with respect to the ABL Collateral at such premises or otherwise in the custody, control or possession of such lessor, consignee or other Person.

“**Collateral Agent**” means Wachovia, in its capacity as the collateral agent under this Agreement, the ABL Guarantee and Collateral Agreement and the other Collateral Documents, or any successor collateral agent.

“**Collateral Documents**” means, collectively, the ABL Guarantee and Collateral Agreement, each Deposit Account Control Agreement, each Collateral Access Agreement and each other document or agreement that creates or purports to create a Lien in favor of the Collateral Agent, for the benefit of the Secured Parties.

“**Commitment**” means, as to each Lender, its obligation to make Revolving Loans to the Borrower pursuant to Section 2.01, to acquire participations in Letters of Credit pursuant to Section 2.03, to acquire participations in Swingline Loans pursuant to Section 2.04 and to acquire participations in Special Agent Loans pursuant to Section 2.05, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Exposure hereunder, as such commitment may be (a) reduced or increased from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.06. The initial amount of each Lender’s Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption or the Accession Agreement pursuant to which such Lender becomes a party hereto, as applicable. The initial aggregate amount of the Lenders’ Commitments is \$225,000,000.

“**Commitment Increase**” has the meaning specified in Section 2.07(d).

“**Committed Loan Notice**” means a notice of (a) a Borrowing of Revolving Loans, (b) a conversion of Revolving Loans from one Type to the other or (c) a continuation of Eurodollar Rate Loans, delivered by the Borrower pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit E.

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit F.

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

---



“**Control**” means the possession, directly or indirectly, of the power (a) to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, or (b) to vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the board of directors or equivalent governing body of such Person. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Credit Extension**” means the making of a Borrowing or the issuance, amendment, renewal or extension of a Letter of Credit.

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

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time or both, would constitute an Event of Default.

“**Default Rate**” means (a) when used with respect to Obligations other than Eurodollar Rate Loans and Participation Fees, an interest rate per annum equal to (i) the Base Rate, plus (ii) the Applicable Rate applicable to Base Rate Loans, plus (iii) 2.0% per annum, (b) when used with respect to Eurodollar Rate Loans, an interest rate per annum equal to the interest rate (including the Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum and (c) when used with respect to Participation Fees, the aggregate rate per annum at which Participation Fees shall otherwise accrue hereunder plus 2.0% per annum.

“**Deposit Account Control Agreement**” means an agreement, in form and substance reasonably satisfactory to the Collateral Agent, among the Collateral Agent, the applicable Loan Party with a deposit account at any bank and the bank at which such deposit account is at any time maintained, which provides that, upon receipt of notice from the Collateral Agent, such bank will comply with instructions originated by the Collateral Agent directing disposition of the funds in the deposit account without further consent of such Loan Party and has such other terms and conditions as the Collateral Agent may require.

“**Designated Subsidiary**” means each Subsidiary set forth on Schedule 1.01(a) and each other Subsidiary that has become a Designated Subsidiary pursuant to Section 2.15(a), other than any Subsidiary that shall have ceased to be a Designated Subsidiary as provided in Section 2.15(b).

“**Dilution Reserve**” means, on any date, a reserve established by the Administrative Agent to reflect dilution with respect to the Accounts, reasonably determined by the Administrative Agent at any time as the product of (a) the Eligible Accounts at such time and (b) the excess, if any, of (i) the percentage obtained by dividing (A) the aggregate amount of non-cash reductions in Accounts of the Borrower and the Designated Subsidiaries for a period, as reasonably determined by the Administrative Agent, preceding such time by (B) the total net sales of the Borrower and the Designated Subsidiaries for such period over (ii) 5.00%.

---



“**Disposition**” or “**Dispose**” means, with respect to any Person, the sale, transfer, or other disposition of any assets by such Person, including any sale and leaseback transaction (but excluding other license or lease arrangements entered into in the ordinary course of business or that are customarily entered into by companies in the same or similar line of business).

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“**Dormant Subsidiaries**” means any Subsidiary so designated by the Borrower in a certificate to the Administrative Agent as to the matters below, so long as, in the case of each Subsidiary so designated, (a) such Subsidiary, taken together with all other Subsidiaries so designated, does not have consolidated assets with a fair market value in the aggregate in excess of 2.5% of the Total Assets and (b) such Subsidiary transacts no business and has no operations other than activities required to maintain its existence; provided that no Subsidiary may be a Dormant Subsidiary if (i) such Subsidiary is a Designated Subsidiary or (ii) the Borrower or any of its other Subsidiaries provides any credit support to such Subsidiary or is liable in any respect for the liabilities of such Subsidiary greater in the aggregate than such Subsidiary’s fair market value.

“**Eligible Accounts**” shall mean Accounts of the Borrower and the Designated Subsidiaries that, in each case, satisfy the criteria set forth below, as reasonably determined by the Administrative Agent:

(a) such Accounts arise from the actual and bona fide sale and delivery of goods or rendition of services by the Borrower or any Designated Subsidiary in the ordinary course of its business, which transactions are completed in accordance with the terms and provisions contained in any documents related thereto and for which an invoice has been rendered;

(b) such Accounts are neither (i) unpaid more than 60 days after the date due nor (ii) unpaid more than 180 days after the date of the original invoice therefor;

(c) such Accounts do not arise from sales on consignment, guaranteed sale, sale and return (other than in the ordinary course of business consistent with past practices, as disclosed to the Administrative Agent prior to the date hereof), sale on approval or other terms under which payment by the account debtor may be conditional or contingent;

(d) the chief executive office of the account debtor with respect to such Accounts is located in the United States or Canada and such account debtor is formed or organized under the laws of a State of the United States or a Province of Canada (provided that, at any time promptly upon the Collateral Agent’s reasonable request, the Borrower or the applicable Designated Subsidiary shall execute and deliver, or cause to be executed and delivered, such other agreements, documents and instruments as may reasonably be required by the Collateral Agent to perfect the security interests of the Collateral Agent in the Accounts owed by any such account debtor the chief executive office of which is located in Canada, or which is formed or organized under the laws of a Province of Canada, in accordance with the applicable Federal or Provincial laws of Canada, and take or cause to be taken such other and further actions as the

---

Collateral Agent may reasonably request to enable the Collateral Agent as secured party with respect thereto to collect such Accounts under the applicable Federal or Provincial laws of Canada);

(e) such Accounts have been invoiced and do not consist of progress billings (such that the obligation of the account debtors with respect to such Accounts is conditioned upon the Borrower's or the applicable Designated Subsidiary's satisfactory completion of any further performance under the agreement giving rise thereto), bill and hold invoices or retainage invoices, except, in the case of bill and hold invoices, if the Administrative Agent shall have received an agreement in writing from the account debtor, in form and substance reasonably satisfactory to the Administrative Agent, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice;

(f) the account debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and is not owed or does not claim to be owed any amounts that may give rise to any right of setoff or recoupment against such Accounts (but the portion of the Accounts of such account debtor in excess of the amount at any time and from time to time owed by the Borrower or the applicable Designated Subsidiary to such account debtor or claimed owed by such account debtor may be deemed Eligible Accounts);

(g) such Accounts are subject to a valid and perfected security interest of the Collateral Agent as provided in the Collateral Documents (which security interest is first in priority, except with respect to nonconsensual Liens permitted under this Agreement that have a higher priority than such security interest as a matter of Law), and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any Liens except those permitted under this Agreement;

(h) the account debtor with respect to such Accounts is not an officer, director, employee, agent or other Affiliate of any Loan Party;

(i) the account debtor with respect to such Accounts is not a Governmental Authority;

(j) the account debtor with respect to such Accounts is not subject to any pending or, to the knowledge of the Borrower or any Designated Subsidiary, threatened bankruptcy, dissolution, liquidation, reorganization or similar proceeding;

(k) such Accounts are not owed by an account debtor any Accounts of which are unpaid (i) more than 60 days after the date due or (ii) more than 180 days after the date of the original invoice therefor, in each case where such unpaid Accounts constitute more than 50% of the total Accounts of such account debtor;

(l) such Accounts are not owed by an account debtor any Accounts of which are subject to any factoring arrangements, except where such factoring arrangements (i) are wholly non-recourse to the Borrower and its Subsidiaries or (ii) are otherwise on terms (including, if requested by the Administrative Agent, lien subordination arrangements) satisfactory to the Administrative Agent in its reasonable discretion;

---

(m) the account debtor with respect to such Accounts is not located in a State requiring the filing of a “Notice of Business Activities Report” or a similar report in order to permit the Borrower or the applicable Designated Subsidiary to seek judicial enforcement in such State of payment of such Account, unless the Borrower or such Designated Subsidiary, as the case may be, is qualified to do business in such State or has filed a “Notice of Business Activities Report” or such similar report for the then current year or such failure to file and inability to seek judicial enforcement are capable of being remedied without any material delay or material cost.

Notwithstanding the foregoing, (i) all Accounts of any single account debtor and its Affiliates that, in the aggregate, exceed the Applicable Concentration Percentage of the total amount of all Eligible Accounts at any time of determination shall be deemed not to be Eligible Accounts to the extent of such excess (it being understood that the foregoing percentage limitation must be satisfied after excluding all Accounts required to be excluded by the preceding sentence) and (ii) without duplication of any ineligibility determinations made pursuant to clause (f) of the preceding sentence, Eligible Accounts shall be reduced by the aggregate amount of the Accrued Right to Offset Accounts. For purposes hereof, “**Applicable Concentration Percentage**” means (a) for the account debtors, and their Affiliates, set forth on Schedule 1.01(b), the percentage specified on such Schedule and (b) for any other account debtor, 20%.

The criteria for Eligible Accounts set forth above may be changed and any new criteria for Eligible Accounts may be established by the Administrative Agent in its reasonable discretion based on either (A) an event, condition or other circumstance arising after the date hereof or (B) an event, condition or other circumstance existing on the date hereof to the extent the Administrative Agent had no written notice thereof from the Borrower prior to the date hereof, which event, condition or other circumstance, in the case of clauses (A) and (B), adversely affects, or could reasonably be expected to adversely affect, the Accounts by an amount that is material, all as reasonably determined by the Administrative Agent. Any Accounts that are not Eligible Accounts shall nevertheless be part of the ABL Collateral.

“**Eligible Assignee**” means (a) any Lender, any Affiliate of any Lender and any Related Fund of any Lender (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof) and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933) and which extends credit or buys loans; provided that neither the Borrower nor any Affiliate of the Borrower shall be an Eligible Assignee.

“**Eligible In-Transit Inventory**” means Inventory (a) that has been shipped for receipt by the Borrower or any Designated Subsidiary within 60 days after the date of shipment, but which has not yet been delivered to or on behalf of the Borrower or such Designated Subsidiary, as the case may be, (b) for which the purchase order is in the name of the Borrower or any Designated Subsidiary and title has passed to the Borrower or such Designated Subsidiary, as the case may be, (c) that is insured in accordance with the terms of this Agreement, (d) if reasonably requested by the Collateral Agent, where the bailee in possession thereof has delivered to the Collateral Agent a Collateral Access Agreement and (e) that otherwise would qualify as Eligible Inventory.

---

**“Eligible Inventory”** means Inventory consisting of finished goods held for resale in the ordinary course of the business of the Borrower and the Designated Subsidiaries, raw materials for such finished goods and work-in-process consisting of unpackaged finished batteries that, in each case, satisfy the criteria set forth below, as reasonably determined by the Administrative Agent. Eligible Inventory shall not include: (a) work-in-process (other than unpackaged finished batteries); (b) components that are not part of finished goods; (c) spare parts for equipment; (d) packaging, display and shipping materials; (e) supplies used or consumed in the business of the Borrower and its Subsidiaries; (f) Inventory located at premises other than those owned by, or leased and controlled by, the Borrower or any Designated Subsidiary, including Inventory in transit with common carriers, except (i) Inventory located at premises with respect to which (A) the Collateral Agent has received a Collateral Access Agreement or (B) an appropriate Landlord Reserve has been established and (ii) Eligible In-Transit Inventory; (g) Inventory subject to a Lien in favor of any Person other than the Collateral Agent, except Liens permitted under this Agreement; (h) bill and hold goods; (i) unserviceable, obsolete or close-out Inventory; (j) Inventory that is not subject to a valid and perfected security interest of the Collateral Agent as provided in the Collateral Documents (which security interest is first in priority, except with respect to nonconsensual Liens permitted under this Agreement that have a higher priority than such security interest as a matter of Law); (k) returned, damaged, re-worked and/or defective Inventory; (l) Inventory that is the subject of consignment by the Borrower or any Designated Subsidiary as consignor or consignee; and (m) Inventory located outside the United States, including Inventory in transit with common carriers (other than Eligible In-Transit Inventory); provided, however, that the Value of Eligible In-Transit Inventory at any time treated as Eligible Inventory shall not exceed \$10,000,000. The criteria for Eligible Inventory set forth above may be changed and any new criteria for Eligible Inventory may be established by the Administrative Agent in its reasonable discretion based on either (i) an event, condition or other circumstance arising after the date hereof or (ii) an event, condition or other circumstance existing on the date hereof to the extent the Administrative Agent had no written notice thereof from the Borrower prior to the date hereof, which event, condition or other circumstance, in the case of clauses (i) and (ii), adversely affects, or could reasonably be expected to adversely affect, the Inventory by an amount that is material, all as reasonably determined by the Administrative Agent. Any Inventory that is not Eligible Inventory shall nevertheless be part of the ABL Collateral.

**“Environmental Laws”** means any and all Federal, state, local, and foreign statutes, laws, regulations, codes, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, the protection of the environment or natural resources, or the presence, management or release into the environment of any pollutants, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems, or to health and safety matters.

**“Environmental Liabilities”** means all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, directives, fines, penalties, demands, investigations, notices, notices of violation, fees, expenses and costs (including administrative oversight costs, natural resource damages and the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use,

---

handling, manufacture, possession, presence, processing, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials or (d) the Release or threatened Release of any Hazardous Materials into the environment.

“**Environmental Permit**” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“**Equity Interests**” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**Equivalent**” in Dollars of any foreign currency on any date means the equivalent in Dollars of such foreign currency determined by using the prevailing foreign exchange spot rate of JPMorgan Chase Bank, N.A., or another commercial bank reasonably acceptable to the Administrative Agent, and the “Equivalent” in any foreign currency of Dollars on any date means the equivalent in such foreign currency of Dollars determined by using the prevailing foreign exchange spot rate of JPMorgan Chase Bank, N.A., or such other commercial bank, for such date.

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) the existence with respect to any Pension Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), and, whether or not waived, the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (d) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan, or notification that a Multiemployer Plan is in reorganization or has been terminated, within the meaning of Title IV of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to

---

terminate a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a determination that any Pension Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4)(A) of ERISA or Section 403(i)(4)(A) of the Code); (h) the application for a minimum funding waiver with respect to a Pension Plan; (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to the Borrower or any of its Subsidiaries; or (k) any other event similar to those described under clauses (a) through (j) with respect to any Foreign Plan.

“**Eurodollar Rate**” means, for any Interest Period, with respect to a Eurodollar Rate Loan, the rate per annum (rounded upward, if necessary, to the next 1/100th of 1%) determined by the Administrative Agent as follows:

$$\text{Eurodollar Rate} = \frac{\text{London Interbank Offered Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

“**Eurodollar Rate Loan**” means a Revolving Loan that bears interest at a rate based on the Eurodollar Rate.

“**Eurodollar Reserve Percentage**” means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). Eurodollar Rate Loans shall be deemed to constitute Eurocurrency liabilities and, as such, shall be deemed subject to reserve requirements without benefits of credits for proration, exceptions or offsets that may be available from time to time to any Lender. The Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Excess Availability**” means, at any time, an amount equal to (a) the lesser of (i) the aggregate Commitments at such time and (ii) the Borrowing Base at such time, minus (b) the aggregate amount of the Revolving Exposures at such time.

“**Excluded Taxes**” means, with respect to any Agent, any Lender, any LC Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes imposed on it (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or in which it otherwise does business or, in the case of any Lender, in which its applicable Lending Office is located or in which it otherwise

---

does business, (b) any branch profits taxes imposed by the United States, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under [Section 10.12](#)), any United States withholding tax that is imposed on amounts payable by the Borrower to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with [Section 3.01\(f\)](#), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such Tax pursuant to [Section 3.01\(a\)](#) and (d) in the case of a Lender that is not a Foreign Lender, other than an assignee pursuant to a request by the Borrower under [Section 10.12](#), any Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with [Section 3.01\(f\)](#), except to the extent that such Lender (or its assignor, if any) was entitled at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such Tax pursuant to [Section 3.01\(a\)](#).

“**Facilities Reduction Amount**” has the meaning specified in the Term Credit Agreement as in effect on the date hereof.

“**Facility**” means, at any time, (a) prior to the Closing Date, the aggregate amount of the Commitments in effect at such time and (b) thereafter, the sum of (i) the aggregate Revolving Exposure at such time and (ii) the aggregate amount of the unused Commitments in effect at such time.

“**Federal Funds Effective Rate**” means, for any day, a fluctuating rate of interest per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average of the quotations on such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Fee Letter**” means the Fee Letter dated June 21, 2007, among the Borrower, GSCP and Wachovia.

“**Fitch**” means Fitch Ratings and any successor thereto.

“**Foreign Government Scheme or Arrangement**” has the meaning specified in [Section 5.12\(c\)](#).

“**Foreign Lender**” means any Lender that is organized under the laws of a jurisdiction other than the United States, each State thereof and the District of Columbia.

“**Foreign Plan**” has the meaning specified in [Section 5.12\(c\)](#).

---



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

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**GSCP**” has the meaning specified in the introductory paragraph hereto.

“**Guarantee**” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “**Guarantee**” as a verb has a corresponding meaning.

“**Guarantee and Collateral Requirement**” means, at any time, the requirement that:

(a) the Collateral Agent shall have received from each Loan Party either (i) a counterpart of the ABL Guarantee and Collateral Agreement duly executed and delivered on behalf of such Loan Party or (ii) in the case of any Person that becomes a Loan Party after the Closing Date, a supplement to the ABL Guarantee and Collateral Agreement, in the form specified therein, duly executed and delivered on behalf of such Loan Party;

---



(b) all documents and instruments, including Uniform Commercial Code financing statements and documents required by Law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by the ABL Guarantee and Collateral Agreement and perfect such Liens to the extent required by, and with the priority required by, the ABL Guarantee and Collateral Agreement, shall have been filed, registered or recorded or delivered to the Collateral Agent for filing, registration or recording;

(c) with respect to each deposit account maintained by any Loan Party (other than any such account the average daily balance in which does not exceed at any time \$1,000,000 for any such account or \$5,000,000 for all such accounts), the Collateral Agent shall have received a counterpart, duly executed and delivered by the applicable Loan Party and the depository institution, of a Deposit Account Control Agreement; provided that the foregoing shall not require delivery of any such agreement with respect to (i) accounts maintained outside the United States or (ii) deposit accounts with respect to which such a Deposit Account Control Agreement is prohibited under applicable Law or under agreements establishing such accounts (provided that such prohibitions in such agreements were not entered into in contemplation of the requirements set forth in this paragraph);

(d) each Loan Party shall have obtained all consents and approvals required to be obtained by it in connection with the execution and delivery of all Collateral Documents to which it is a party, the performance of its obligations thereunder and the granting by it of the Liens thereunder, in each case, other than any such consents and approvals that could not reasonably be expected to be material to the interests of the Lenders under the Loan Documents;

(e) the Collateral Agent shall have received, in form and substance reasonably satisfactory to the Collateral Agent, all waivers, acknowledgments and other agreements (including Collateral Access Agreements) from third parties that the Collateral Agent may deem necessary or desirable in order to permit and perfect its Liens on the ABL Collateral or to effectuate the provisions or purposes of this Agreement and the other Loan Documents; and

(f) the Collateral Agent shall have received evidence, in form and substance reasonably satisfactory to the Collateral Agent, that the Collateral Agent has a valid and perfected Lien on all of the ABL Collateral.

The foregoing definition shall not require the creation or perfection of security interests in, or the obtaining of Deposit Account Control Agreements with respect to, particular assets if and for so long as, in the judgment of the Collateral Agent, the cost of creating or perfecting such security interests in such assets or obtaining Deposit Account Control

---

Agreements in respect of such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom. The Collateral Agent may grant extensions of time for the delivery of Deposit Account Control Agreements, consents, approvals, waivers, acknowledgments and other agreements referred to in clause (c), (d) or (e) above (including extensions beyond the Closing Date), where it determines that such delivery cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents. The requirements of clause (e) above shall be deemed to have been satisfied if the Loan Parties shall have used their reasonable best efforts to obtain the waivers, acknowledgments and agreements referred to therein (irrespective of whether such waivers, acknowledgements or agreements were in fact obtained).

“**Hazardous Materials**” means all radioactive substances, radioactive wastes, hazardous or toxic substances, hazardous or toxic wastes, or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, hazardous materials and all other substances or wastes of any nature prohibited, limited or regulated pursuant to any Environmental Law.

“**Increase Effective Date**” has the meaning specified in Section 2.07(d).

“**Increasing Lender**” has the meaning specified in Section 2.07(d).

“**Indebtedness**” means, as to any Person, without duplication, all of the following, each to the extent treated as indebtedness or liabilities in accordance with GAAP:

- (a) all indebtedness of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
  - (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (whether standby or commercial), bankers’ acceptances, bank guarantees, surety bonds and similar instruments;
  - (c) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business and (ii) any purchase price adjustment, earnout or deferred payment of a similar nature incurred in connection with a Permitted Acquisition or a Disposition, but only to the extent no payment is then owed pursuant to such purchase price adjustment, earnout or deferred payment obligation);
  - (d) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements) in an amount up to the lesser of the amount of indebtedness so secured and the fair market value of the property securing such indebtedness, whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
  - (e) all Attributable Indebtedness;
-

(f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any cash payment (other than, in each case, at the sole option of such Person or pursuant to exercise by any holder of common stock of such Person, or of options with respect to such common stock, of a right under any equity incentive plan of such Person to require a repurchase thereof in connection with any Taxes payable by such holder as a result of vesting, or lapse of restrictions on transfer, of such common stock or options, to the extent the payment made in any such repurchase does not exceed the amount of Taxes so payable) in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(g) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

**“Indemnified Liabilities”** means, collectively, any and all liabilities (including Environmental Liabilities), obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable out-of-pocket fees and expenses of consultants and fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any Laws (including Securities Laws, commercial Laws and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (a) this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including the Lenders’ and the LC Issuers’ agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the ABL Collateral or the enforcement of any Guarantee of the Obligations)), (b) the commitment letter (and the Fee Letter) delivered by any Agent or any Arranger to the Borrower with respect to the transactions contemplated by this Agreement or (c) any Environmental Liability or any Hazardous Materials relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership or practice of the Borrower or any of its Subsidiaries.

**“Indemnified Taxes”** means Taxes arising from any payment hereunder or under any other Loan Document, other than Excluded Taxes.

**“Indemnitees”** has the meaning specified in [Section 10.04\(b\)](#).

**“Indentures”** means, collectively, the 2013 New Indenture, the 2013 Original Indenture and the 2015 Indenture.

---

“**Information Memorandum**” means the Information Memorandum dated September 2007, used by the Arrangers in connection with the syndication of the Facility.

“**Initial Borrowing**” has the meaning specified in Section 2.07(d).

“**Interest Payment Date**” means (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the first Business Day of each April, July, October and January and the Maturity Date.

“**Interest Period**” means, as to any Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice or, to the extent agreed to by all Lenders, nine or twelve months thereafter; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless (i) such Business Day falls in another calendar month or (ii) such Business Day falls more than 365 days after the commencement of such Interest Period (or if such Interest Period includes February 29, 366 days), in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“**Internal Control Event**” means a material fraud that involves management employees who have a significant role in the internal controls over financial reporting of the Borrower, in each case as described in the Securities Laws.

“**Inventory**” means, as to the Borrower or any Designated Subsidiary, all of the Borrower’s or such Designated Subsidiary’s now owned and hereafter existing or acquired goods, wherever located, that (a) are leased by the Borrower or such Designated Subsidiary as lessor, (b) are held by the Borrower or such Designated Subsidiary for sale or lease or to be furnished under a contract of service, (c) are furnished by the Borrower or such Designated Subsidiary under a contract of service or (d) consist of raw materials, work in process, finished goods or materials used or consumed in the business of the Borrower or such Designated Subsidiary.

“**Inventory Borrowing Base Availability**” means, at any time, the Borrowing Base at such time, minus any amount thereof attributable to Eligible Accounts.

---

“**Investment**” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“**IP Rights**” has the meaning specified in Section 5.16.

“**IRB Debt**” means Indebtedness of the Borrower arising as a result of the issuance of tax-exempt industrial revenue bonds or similar tax-exempt public financing.

“**IRS**” means the United States Internal Revenue Service.

“**Landlord Reserves**” means Other Reserves of the type referred to in clause (E) of the penultimate sentence of the definition of the term “Other Reserves”.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances and codes, and all applicable administrative orders and agreements with, any Governmental Authority, in each case having the force of law.

“**LC Disbursement**” means any payment made by an LC Issuer pursuant to a Letter of Credit.

“**LC Exposure**” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“**LC Issuer**” means (a) Wachovia and (b) each Lender or other financial institution designated as an LC Issuer pursuant to Section 2.03(j), in each case in its capacity as an issuer of Letters of Credit hereunder. Each LC Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such LC Issuer, in which case the term “LC Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“**Lenders**” means the Persons listed on Schedule 2.01 as having a Commitment and any other Person that shall have become a party hereto pursuant to an Accession Agreement or an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and the Administrative Agent, in its capacity as the lender of the Special Agent Loans.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

---

“**Letter of Credit**” means any letter of credit issued and outstanding hereunder.

“**Letter of Credit Limit**” means \$60,000,000.

“**Lien**” means any mortgage, pledge, hypothecation, encumbrance, lien (statutory or other), charge, priority or other security interest or preferential arrangement in the nature of a security interest of any kind (including (a) any conditional sale or other title retention agreement, (b) any easement, right of way or other encumbrance on title to real property and (c) any financing lease having substantially the same economic effect as any of the foregoing, but not including the interest of a lessor under an operating lease).

“**Loan**” means a Revolving Loan, a Swingline Loan or a Special Agent Loan, or a combination thereof, as the context requires.

“**Loan Documents**” means, collectively, this Agreement, each Accession Agreement, the ABL Intercreditor Agreement, the ABL Guarantee and Collateral Agreement and the other Collateral Documents.

“**Loan Parties**” means, collectively, the Borrower and the Subsidiary Loan Parties.

“**London Interbank Offered Rate**” means, for any Interest Period, the rate of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters Screen LIBOR01 Page (or any successor page) as the London interbank offered rate for deposits in Dollars at approximately 11:00 a.m., London time, two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided that, if more than one rate is specified on Reuters Screen LIBOR01 Page (or such successor page), the applicable rate shall be the arithmetic mean of all such rates. In the event that such rate does not appear on such page (or otherwise on the Reuters Service), then the “Eurodollar Base Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the London Branch of Wachovia to major banks in the London interbank eurocurrency market at their request at approximately 11:00 a.m., London time, two Business Days prior to the first day of such Interest Period.

“**Material Adverse Effect**” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole, or (b) a material impairment of the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or of the rights and remedies, taken as a whole, of the Administrative Agent, the Collateral Agent or any Lender under any Loan Document, or of the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents.

“**Material Indebtedness**” means any Indebtedness of the Borrower or any of its Subsidiaries having an aggregate principal amount, including undrawn committed or available amounts, of at least the Threshold Amount.

---

“**Maturity Date**” means September 28, 2011.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions.

“**Net Cash Proceeds**” means, with respect to any Disposition by the Borrower or any of its Subsidiaries, the excess, if any, of (a) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (b) the sum of (i) the principal amount of any Indebtedness (A) that is secured by the Disposed asset or (B) in the case of any Disposition by a Foreign Subsidiary, that is owed by such Foreign Subsidiary and, in each case under clause (A) or (B), that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents or the Term Loan Agreement), together with any interest, premium or penalties required to be paid in connection therewith, (ii) the direct costs and expenses (including sales commissions and legal, accounting and investment banking fees but excluding costs and expenses owed to any Affiliate of the Borrower (other than THLee)) incurred by the Borrower or such Subsidiary in connection with such transaction, (iii) Taxes reasonably estimated to be actually payable within one year of the date of such transaction (or receipt of a deferred payment, as applicable) as a result of any gain recognized in connection therewith and (iv) any reserve for adjustment in respect of (x) sale price of the Disposed assets established in accordance with GAAP and (y) any liabilities associated with such asset and retained by the Borrower or any of its Subsidiaries after such Disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnifications obligations associated with such transaction.

“**Net Recovery Percentage**” means a fraction, expressed as a percentage, (a) the numerator of which is the amount of the recovery in respect of the Inventory of the Borrower and the Designated Subsidiaries, stated in Dollars, determined on a “net orderly liquidation value” basis as set forth in the most recent appraisal of such Inventory received by the Administrative Agent in accordance with Section 6.18, net of operating expenses, liquidation expenses and commissions reasonably estimated to be incurred in connection therewith, and (b) the denominator of which is the Value of such Inventory as of the date of such appraisal (or as of a recent date prior thereto).

“**Non-Consenting Lender**” has the meaning specified in Section 10.01.

“**Nonpublic Information**” means information that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD promulgated under the Securities Laws.

“**NPL**” means the National Priorities List under CERCLA.

---



“**Obligations**” has the meaning specified in the ABL Guarantee and Collateral Agreement.

“**OECD**” means the Organization for Economic Cooperation and Development.

“**OECD Member**” means a country that signed or ratified the Convention on the Organization for Economic Cooperation and Development and is thus a member of OECD.

“**Organization Documents**” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Reserves**” means, as of any date of determination, such amounts as the Administrative Agent may from time to time establish and revise, in its reasonable credit judgment consistent with its other asset-based lending transactions of this type, as reserves reducing the amount of the Borrowing Base that would otherwise be in effect hereunder or, with respect to such reserves that would qualify as Specified Reserves, reducing the amount of credit available hereunder, in each case (a) to reflect events, conditions, contingencies or risks that, adversely affect, or could reasonably be expected to adversely affect, in any material respect (i) the ABL Collateral, its value or the amount that might be received by the Collateral Agent from the sale or other disposition or realization upon such ABL Collateral, (ii) the assets or business of the Borrower and the Designated Subsidiaries or (iii) the security interest of the Collateral Agent in the ABL Collateral (including the enforceability, perfection and priority thereof), all as reasonably determined by the Administrative Agent; (b) to reflect the Administrative Agent’s reasonable belief that any Borrowing Base Certificate, collateral report or other financial information furnished by or on behalf of any Loan Party to the Administrative Agent is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts that the Administrative Agent reasonably determines constitutes a Default or an Event of Default. Without limiting the generality of the foregoing, Other Reserves may, in the Administrative Agent’s reasonable discretion, be established to reflect, without duplication, (A) cost variances, accrued royalties, returns, discounts, claims, credits and allowances of any nature that are not paid pursuant to the reduction of Accounts, (B) sales, excise or similar Taxes included in the amount of any Accounts reported to the Administrative Agent, (C) a change in the turnover, age or mix of the categories of Inventory that adversely affects the aggregate value of all Inventory by an amount reasonably determined by the Administrative Agent to be material, (D) purchase price variances with respect to Inventory and (E) amounts (including up to three-months rent) due or to become due to owners and lessors of premises where any ABL Collateral is located, other than for those locations where the Collateral Agent has received a Collateral Access Agreement. The amount of any Other Reserve established by the Administrative Agent shall have a reasonable relationship to the event,

---



condition or other matter that is the basis for such reserve, as reasonably determined by the Administrative Agent. Notwithstanding anything herein to the contrary, Other Reserves in effect at any time shall not be duplicative of any ineligibility determinations made pursuant to the criteria set forth in the definitions of the terms “Eligible Accounts” and “Eligible Inventory”.

“**Other Taxes**” means all present or future stamp, documentary, excise, property, intangible, mortgage recording or similar taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“**Overadvance Loan**” means any Revolving Loan if, after giving effect to the making thereof, the aggregate amount of the Revolving Exposures (other than any portion thereof attributable to the Special Agent Loan Exposure) exceeds an amount equal to (a) the lesser of (i) the aggregate Commitments at such time, (ii) the Borrowing Base at such time and (iii) the Facilities Reduction Amount at such time, less (b) the Specified Reserves at such time, less (c) the Availability Block.

“**Overadvance Loan Exposure**” means, at any time, the aggregate principal amount of all Overadvance Loans outstanding at such time. The Overadvance Loan Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total Overadvance Loan Exposure at such time.

“**Overadvance Maximum Amount**” means, at any time, an amount determined by the Administrative Agent in its discretion to be the Overadvance Maximum Amount at such time, provided that (a) such amount shall not exceed, at any time, \$12,500,000 and (b) the sum of the Overadvance Maximum Amount plus the Special Agent Loan Maximum Amount shall not exceed, at any time, an amount equal to the lesser of (i) 10% of the aggregate Commitments in effect at such time and (ii) the Availability Block; provided further that, in the event that the Lenders representing at least the Supermajority Required Lenders at the time of the delivery thereof shall have delivered to the Administrative Agent a written notice to the effect that the Overadvance Maximum Amount may not exceed the amount specified in such notice, then, from and after the date of the receipt by the Administrative Agent of such notice (and, if applicable, until the date of receipt of a subsequent such notice), for purposes of Sections 2.01(b), 2.04(a) and 4.02(b) the Overadvance Maximum Amount may not exceed the amount set forth in such notice.

“**Participation Fees**” means the letter of credit participation fees payable by the Borrower to the Lenders pursuant to Section 2.10(b).

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate, to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute or to which the Borrower or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

---

“**Perfection Certificate**” means a certificate in the form attached to the ABL Guarantee and Collateral Agreement or any other form approved by the Collateral Agent.

“**Permitted Acquisition**” means an Investment that is consummated in compliance with the requirements of Section 7.03(h).

“**Permitted Liens**” has the meaning specified in Section 7.01.

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Plan**” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“**Platform**” has the meaning specified in Section 6.04.

“**Prime Rate**” means the rate of interest from time to time announced by Wachovia, or its successors, as its prime rate. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Any Agent or any Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“**Qualified Foreign Credit Facility**” means a term loan, revolving credit or overdraft facility provided by a Lender, an Arranger, an Affiliate of any of the foregoing or any other financial institution to any Foreign Subsidiary, which facility (a) is permitted under Section 7.02 and (b) is designated as a “Qualified Foreign Credit Facility” in a written notice by the Borrower to the Administrative Agent, provided that the aggregate principal amount of all such Qualified Foreign Credit Facilities in effect at any time shall not exceed \$25,000,000.

“**Register**” has the meaning specified in Section 10.06(b).

“**Registered Public Accounting Firm**” has the meaning specified by the Securities Laws and shall be independent of the Borrower, within the meaning of the Securities Laws.

“**Related Fund**” means, with respect to any Lender, any investment fund that invests in commercial loans and that is managed or advised by such Lender, the same investment advisor as such Lender or by an Affiliate of such Lender or such investment advisor.

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

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

---

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

“**Report**” has the meaning specified in Section 9.08(c).

“**Required Lenders**” means, at any time, Lenders having Revolving Exposures and unused Commitments representing more than 50% of the sum of (a) the aggregate Revolving Exposure outstanding at such time and (b) the aggregate unused Commitments in effect at such time.

“**Responsible Officer**” means, in the case of the Borrower or any other Loan Party, the chairman or vice chairman, chief executive officer, president, chief financial officer, general counsel, secretary, treasurer or assistant treasurer (or such other officer as may be reasonably acceptable to the Administrative Agent) of the Borrower or such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party, and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“**Restricted Payment**” means any dividend or other distribution with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof).

“**Revolving Borrowing**” means Revolving Loans of the same Type made, converted or continued on the same date and, in the case of Eurodollar Rate Loans, as to which a single Interest Period is in effect.

“**Revolving Exposure**” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans and its LC Exposure, Swingline Exposure and Special Agent Loan Exposure at such time.

“**Revolving Loan**” means a Loan made pursuant to Section 2.01.

“**S&P**” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“**Sarbanes–Oxley**” means the Sarbanes–Oxley Act of 2002.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Secured Parties**” has the meaning specified in the ABL Guarantee and Collateral Agreement.

---

**“Securities Laws”** means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley and, in each case, the rules and regulations of the SEC promulgated thereunder, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date under this Agreement.

**“Solvent”** and **“Solvency”** mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts and other liabilities as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or other liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s assets would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual or matured liability.

**“Special Agent Loan”** means a Loan made pursuant to Section 2.05.

**“Special Agent Loan Exposure”** means, at any time, the aggregate principal amount of all Special Agent Loans outstanding at such time. The Special Agent Loan Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total Special Agent Loan Exposure at such time.

**“Special Agent Loan Maximum Amount”** means, at any time, an amount determined by the Administrative Agent in its discretion to be the Special Agent Loan Maximum Amount at such time, provided that the sum of the Special Agent Loan Maximum Amount plus the Overadvance Maximum Amount shall not exceed, at any time, an amount equal to the lesser of (a) 10% of the aggregate Commitments in effect at such time and (b) the Availability Block; provided further that, in the event that the Lenders representing at least the Supermajority Required Lenders at the time of the delivery thereof shall have delivered to the Administrative Agent a written notice to the effect that the Special Agent Loan Maximum Amount may not exceed the amount specified in such notice, then, from and after the date of the receipt by the Administrative Agent of such notice (and, if applicable, until the date of receipt of a subsequent such notice), for purposes of Sections 2.05(a) and 4.02(b), the Special Agent Loan Maximum Amount may not exceed the amount set forth in such notice.

**“Specified Reserves”** means, as of any date of determination, Other Reserves on account of items that, in the reasonable judgment of the Administrative Agent, would result in a future cash expenditure by or on behalf of the Borrower or any Subsidiary; provided, that the Administrative Agent may at any time and from time to time, in its discretion, (a) reduce the amount of Specified Reserves below the amount that would otherwise constitute Specified

---

Reserves determined in accordance with this definition and (b) reinstate (in whole or in part) any reduction made pursuant to clause (a), it being understood that any reduction or reinstatement made pursuant to this paragraph shall not, in itself, affect the amount of Other Reserves (which shall be determined in accordance with the definition of such term).

“**Subordinated Notes**” means the 2013 New Notes, the 2013 Original Notes and the 2015 Notes.

“**Subsequent Borrowing**” has the meaning specified in Section 2.07(d).

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person (including, for the avoidance of doubt, a company, corporation or partnership which is a “dependent enterprise” (*abhängiges Unternehmen*) of such Person within the meaning of Section 17 of the German Stock Corporation Act (*Aktiengesetz*), or which is a “subsidiary” (*Tochterunternehmen*) within the meaning of Section 290 of the German Commercial Code (*Handelsgesetzbuch*) of such Person, or where such Person has the power to direct the management and the policies of such entity whether through the ownership of share capital, contract or otherwise). Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Loan Parties**” means any Subsidiary of the Borrower that is not a Foreign Subsidiary or a Dormant Subsidiary and, for purposes of Article VII, that is a party to the ABL Guarantee and Collateral Agreement.

“**Supermajority Required Lenders**” means, at any time, Lenders having Revolving Exposures and unused Commitments representing more than 66-2/3% of the sum of (a) the aggregate Revolving Exposure outstanding at such time and (b) the aggregate unused Commitments in effect at such time.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

---

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Swingline Exposure**” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

“**Swingline Lender**” means Wachovia, in its capacity as lender of Swingline Loans hereunder.

“**Swingline Limit**” means \$30,000,000.

“**Swingline Loan**” means a Loan made pursuant to Section 2.04.

“**Syndication Agent**” means GSCP, in its capacity as the syndication agent for the Facility.

“**Synthetic Debt**” means, with respect to any Person, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of Indebtedness or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“**Synthetic Lease Obligation**” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

“**Term Credit Agreement**” means the Credit Agreement dated as of March 30, 2007, among the Borrower, GSCP, as the administrative agent, collateral agent and syndication agent, Wachovia, as the deposit agent, Bank of America, N.A., as an LC issuer, and the lenders party thereto.

---

“**Term Facility Closing Date**” means March 30, 2007.

“**THLee**” means Thomas H. Lee Partners, L.P. and its Affiliates.

“**Threshold Amount**” means \$15,000,000.

“**Total Assets**” means, as of any day, the total consolidated assets of the Borrower and its Subsidiaries, as shown on the most recent balance sheet delivered pursuant to Section 6.01.

“**Transactions**” means, collectively, the execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of the Loans and the use of the proceeds thereof, the obtaining of the Letters of Credit and the creation and perfection of Liens granted under the Collateral Documents.

“**Type**” means, with respect to any Revolving Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“**Unfunded Pension Liability**” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unrestricted Cash**” means, as of any date of determination, the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties that is on deposit in one or more deposit or securities accounts maintained at a bank or a securities intermediary, provided that such deposit or securities accounts are, in each case, maintained at a branch office thereof located within the United States.

“**Value**” means, with respect to Inventory, the lower of (a) the cost thereof, computed on a first-in first-out basis in accordance with GAAP, and (b) the market value thereof, in each case as reasonably determined by the Administrative Agent; provided that, for purposes of the calculation of the Borrowing Base, (i) the Value of the Inventory shall not include (A) the portion of the value of Inventory equal to the profit earned by any Affiliate of the Borrower on the sale thereof to the Borrower or any Subsidiary or (B) write-ups or write-downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner as, and consistent with, the most recent appraisal of the Inventory received by the Administrative Agent prior to the date hereof.

“**Wachovia**” has the meaning specified in the introductory paragraph hereto.

“**Wholly-Owned Subsidiary**” means any Person in which, other than director’s qualifying shares or similar shares owned by other Persons due to native ownership requirements, 100% of the capital stock or other equity interests of each class is owned beneficially and of record by the Borrower or by one or more other wholly-owned Subsidiaries of the Borrower.

---



Section 1.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “*include*,” “*includes*” and “*including*” shall be deemed to be followed by the phrase “*without limitation*.” The word “*will*” shall be construed to have the same meaning and effect as the word “*shall*.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “*herein*,” “*hereof*” and “*hereunder*,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (vi) the words “*asset*” and “*property*” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “*from*” means “*from and including*”; the words “*to*” and “*until*” each mean “*to but excluding*”; and the word “*through*” means “*to and including*”.

(c) Article and Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

### Section 1.03. Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, as in effect from time to time, applied on a consistent basis in a manner consistent with that used in preparing the audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended September 30, 2006, except as otherwise specifically prescribed herein.

---



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

Section 1.04. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.05. Currency Equivalents Generally. Unless otherwise set forth herein, any amount specified in this Agreement in Dollars shall include the Equivalent in Dollars of such amount in any foreign currency and if any amount described in this Agreement is comprised of amounts in Dollars and amounts in one or more foreign currencies, the Equivalent in Dollars of such foreign currency amounts shall be used to determine the total.

Section 1.06. Designation as Senior Debt. The Loans and other Obligations hereunder are hereby designated as “Senior Debt” and as “Designated Senior Debt” under, and for purposes of, each of the Indentures, and are further given all such other designations (including designations as “senior debt” and “designated senior debt”) as shall be required under the terms of any other subordinated Indebtedness of the Borrower or any of the Subsidiary Loan Parties in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior Indebtedness under the terms of such subordinated Indebtedness.

## ARTICLE II

### THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender severally agrees to make Revolving Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount at any time outstanding that will not result in:

(a) the Revolving Exposure of such Lender exceeding (i) such Lender’s Commitment at such time or (ii) such Lender’s Applicable Percentage of the Borrowing Base at such time; or

(b) the aggregate amount of the Revolving Exposures exceeding an amount equal to (i) the lesser of (A) the aggregate Commitments at such time, (B) the Borrowing Base at such time and (C) the Facilities Reduction Amount at such time, minus (ii) the Availability Block, minus (iii) the Specified Reserves at such time, plus (iv) the Overadvance Maximum Amount at such time, plus (v) the Special Agent Loan Exposure at such time.

---

The Revolving Loans shall be made by the Lenders ratably in accordance with their respective Commitments and shall be denominated in Dollars. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

Section 2.02. Borrowings, Conversions and Continuations of Revolving Loans.

(a) Subject to Section 2.13(c), each Revolving Borrowing, each conversion of Revolving Loans from one Type to the other and each continuation of Eurodollar Rate Loans shall be made upon an irrevocable notice by the Borrower to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (i) 1:00 p.m. three Business Days prior to the requested date of any Revolving Borrowing of, conversion to or continuation of Eurodollar Rate Loans, and (ii) 1:00 p.m. on the requested date of any Revolving Borrowing of or conversion to Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$2,500,000 or a whole multiple of \$500,000 in excess thereof, and each borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; provided, however, that in the event any outstanding Revolving Borrowing is not a whole multiple of the multiple thresholds set forth above, then the foregoing multiple thresholds shall not be applicable to such Revolving Borrowing to the extent compliance therewith cannot be accomplished as a result thereof. Each telephonic request and each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Revolving Borrowing, a conversion of Revolving Loans from one Type to the other or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Revolving Borrowing, conversion or continuation, as the case may be, which date shall be a Business Day, (iii) the principal amount of Revolving Loans to be borrowed, converted or continued, (iv) the Type of Revolving Loans to be borrowed or to which existing Revolving Loans are to be converted and (v) in the case of a Eurodollar Rate Loan, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Revolving Loan in a Committed Loan Notice, or if the Borrower fails to give a timely notice requesting a conversion or continuation thereof, then the applicable Revolving Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loan. If the Borrower requests a Revolving Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. The provisions of this Section shall not apply to Swingline Loans, which shall be governed by Section 2.04, or Special Agent Loans, which shall be governed by Section 2.05.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of its Applicable Percentage of the Revolving Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans. Each Lender shall make the amount of each Revolving Loan to be made by it hereunder

---

available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 4:00 p.m. on the Business Day specified in the applicable Committed Loan Notice or, in the case of any Revolving Loans requested pursuant to Section 2.13(c), in the notice by the Administrative Agent to the Revolving Lenders referred to in such Section. Subject to the satisfaction of the applicable conditions set forth in Article IV, the Administrative Agent shall (i) make all funds so received available to the Borrower, in like funds as received by the Administrative Agent, by wire transfer of such funds in accordance with instructions provided to the Administrative Agent by the Borrower, which instructions shall be reasonably acceptable to the Administrative Agent, or (ii) in the case of any Revolving Loans requested pursuant to Section 2.13(c), apply such funds for the purposes set forth in such Section.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of an Event of Default, no Revolving Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate.

(e) After giving effect to all Borrowings, all conversions of Revolving Loans from one Type to the other and all continuations of Revolving Loans as Revolving Loans of the same Type, there shall be no more than 10 Interest Periods in effect at any time in respect of the Facility.

### Section 2.03. Letters of Credit.

(a) Generally. Subject to the terms and conditions set forth herein, the Borrower may request any LC Issuer to issue Letters of Credit in Dollars for its own account or, so long as the Borrower is a joint and several co-applicant with respect thereto, for the account of any of the Subsidiaries (provided the identity of such Subsidiary is reasonably acceptable to the Administrative Agent), in a form reasonably acceptable to the Administrative Agent and the applicable LC Issuer, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, an LC Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the account of any Subsidiary as provided in the first sentence of this paragraph, it will be fully responsible for the reimbursement of LC Disbursements, the payment of interest thereon and the payment of Participation Fees to the same extent as if it were the sole account party in respect of such Letter of Credit (the Borrower hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor of the obligations of any Subsidiary that shall be an account party in respect of any such Letter of Credit).

---

(b) Notice of Issuance, Amendment, Renewal and Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or send by facsimile (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable LC Issuer) to the applicable LC Issuer and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of such Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension, as applicable (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with Section 2.03(c)), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the account party for such Letter of Credit and such other information as shall be necessary to enable the applicable LC Issuer to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable LC Issuer, the Borrower also shall submit a letter of credit application on the applicable LC Issuer's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension, (i) the aggregate LC Exposure will not exceed the Letter of Credit Limit and (ii) the aggregate amount of the Revolving Exposures (other than any portion thereof attributable to Overadvance Loans or Special Agent Loans) will not exceed (A) the lesser of (1) the aggregate Commitments at such time, (2) the Borrowing Base at such time and (3) the Facilities Reduction Amount at such time, minus (B) the Availability Block at such time, minus (C) the Specified Reserves at such time. Each LC Issuer agrees that it will not issue, renew, extend or increase the amount of any Letter of Credit without first obtaining written confirmation from the Administrative Agent that such action is then permitted under this Agreement.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date; provided that any Letter of Credit may contain customary automatic renewal provisions agreed upon by the Borrower and the applicable LC Issuer pursuant to which the expiration date shall be automatically extended for a period of up to 12 months (but not to a date later than the date set forth in clause (ii) above), subject to a right on the part of such LC Issuer to prevent any such renewal from occurring by giving notice to the beneficiary by a specified time in advance of any such renewal.

(d) Participations. By the issuance of a Letter of Credit, or an amendment to a Letter of Credit increasing the amount thereof, and without any further action on the part of the applicable LC Issuer or the Revolving Lenders, such LC Issuer hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such LC Issuer, a participation in such Letter of Credit equal to such Revolving Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees that if an LC Issuer makes a LC Disbursement that is not reimbursed by the Borrower on the date due as provided in Section 2.03(e), or is required to refund any reimbursement payment in respect of a LC Disbursement to the Borrower for any reason, such Revolving Lender shall pay to the

---

Administrative Agent, for the account of the applicable LC Issuer, such Revolving Lender's Applicable Percentage of the amount of such LC Disbursement. Each Revolving Lender acknowledges and agrees that its obligation to acquire and fund participations in respect of Letters of Credit pursuant to this Section 2.03(d) is unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If an LC Issuer shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to such LC Issuer an amount equal to such LC Disbursement not later than 2:00 p.m. on (i) the Business Day that the Borrower receives notice of such LC Disbursement, if such notice is received prior to 10:00 a.m. on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives notice of such LC Disbursement, if such notice is not received prior to such time on the day of receipt. If the Borrower fails to make any payment referred to in the preceding sentence with respect to a Letter of Credit, the applicable LC Issuer shall notify the Administrative Agent in accordance with Section 2.03(k), and the Administrative Agent shall in turn notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Revolving Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.02 with respect to Revolving Loans made by such Revolving Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the applicable LC Issuer the amounts so received by it from the Revolving Lenders. Such LC Issuer shall promptly notify the Administrative Agent of any amount subsequently received by it from the Borrower or another Loan Party in respect of such LC Disbursement, and shall remit to the Administrative Agent any such amount promptly upon receipt thereof. Promptly following receipt by the Administrative Agent of any such remittance or of any payment by or on behalf of the Borrower in respect of such LC Disbursement, the Administrative Agent shall remit such payment to such LC Issuer or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such LC Issuer, then to the Revolving Lenders and such LC Issuer as their interests may appear. Any payment made by a Revolving Lender pursuant to this Section 2.03(e) to reimburse an LC Issuer for any LC Disbursement shall not constitute a loan and shall not relieve the Borrower (or any other account party in respect of the relevant Letter of Credit) of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.03(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an LC Issuer under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of

---

this Section 2.03(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. None of the Administrative Agent, the Lenders or the LC Issuers, or any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of an LC Issuer; provided that the foregoing shall not be construed to excuse any LC Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such LC Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of an LC Issuer, such LC Issuer shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable LC Issuer may either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each LC Issuer shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit issued by it. Such LC Issuer shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by hand delivery or facsimile) of such demand for payment and whether such LC Issuer has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such LC Issuer and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If an LC Issuer shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at a rate per annum (computed in accordance with Section 2.09(a)) equal to the rate then applicable to Base Rate Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to Section 2.03(e), then Section 2.09(b) shall apply. Interest accrued pursuant to this Section 2.03(h) shall be for the account of the applicable LC Issuer, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to Section 2.03(e) to reimburse such LC Issuer shall be for the account of such Revolving Lender to the extent of such payment.

(i) Termination of an LC Issuer. Any LC Issuer may cease to be an LC Issuer at any time by written agreement among the Borrower, the Administrative Agent and such LC Issuer.

---



The Administrative Agent shall promptly notify the Revolving Lenders of any such termination of an LC Issuer. At the time any such termination shall become effective and from time to time thereafter as long as any Letters of Credit issued by such LC Issuer shall remain outstanding, the Borrower shall pay all unpaid fees accrued for the account of the terminated LC Issuer pursuant to [Section 2.10\(b\)](#). After the termination of an LC Issuer hereunder, such LC Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an LC Issuer under this Agreement with respect to Letters of Credit issued by it prior to such termination, but shall not be required to issue additional Letters of Credit.

(j) [Additional LC Issuers](#). The Borrower may, at any time and from time to time, with the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and the designated Person, designate one or more additional Lenders to act as an LC Issuer under the terms of this Agreement, and any Lender so designated shall become an LC Issuer hereunder.

(k) [LC Issuer Reports](#). Unless otherwise agreed to by the Administrative Agent, each LC Issuer shall report in writing to the Administrative Agent (i) on or prior to each Business Day on which such LC Issuer issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the aggregate face amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amount thereof shall have changed), (ii) on each Business Day on which such LC Issuer makes any LC Disbursement, the date and amount of such LC Disbursement, (iii) on any Business Day on which the Borrower fails to reimburse an LC Disbursement required to be reimbursed to such LC Issuer on such day, the date of such failure and the amount of such LC Disbursement and (iv) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such LC Issuer and outstanding on such Business Day.

(l) [Cash Collateralization](#). If any Event of Default shall occur and be continuing or if the Borrower is required to provide cash collateral pursuant to [Section 2.06\(b\)](#), on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this [Section 2.03\(l\)](#), the Borrower shall deposit in an account designated by the Administrative Agent, in the name of the Administrative Agent and for the ratable benefit of the Lenders, an amount in cash equal to 105% of the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, (i) upon the occurrence of any Event of Default described in [Section 8.01\(f\)](#) and (ii) as required by [Section 2.06\(b\)](#). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense (provided that such cash collateral shall be invested solely in investments that provide for preservation of capital), such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to

---

reimburse the LC Issuers for LC Disbursements for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Lenders), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to deposit cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower (i) within three Business Days after all Events of Default have been cured or waived and (ii) promptly upon the payment in full of all the Obligations and the reduction of the aggregate LC Exposure to zero. If the Borrower is required to provide cash collateral hereunder pursuant to Section 2.06(b), such amount (to the extent not applied as aforesaid) shall be returned to the Borrower as and to the extent that, after giving effect to such return, the Borrower would remain in compliance with Section 2.06(b).

#### Section 2.04. Swingline Loans.

(a) Generally. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate Swingline Exposure exceeding the Swingline Limit or (ii) the aggregate amount of the Revolving Exposures exceeding an amount equal to (A) the lesser of (1) the aggregate Commitments at such time, (2) the Borrowing Base at such time and (3) the Facilities Reduction Amount at such time, minus (B) the Availability Block, minus (C) the Specified Reserves at such time, plus (D) the Overadvance Maximum Amount at such time, plus (E) the Special Agent Loan Exposure at such time; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) Borrowings of Swingline Loans. Subject to Section 2.13(c), to request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by hand delivery or facsimile), not later than 1:00 p.m. on the requested date of the making of such Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of the notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a wire transfer in accordance with instructions provided to the Swingline Lender by the Borrower, which instructions shall be reasonably acceptable to the Swingline Lender, by 3:00 p.m. on the requested date of such Swingline Loan; provided, however, that each Swingline Loan requested pursuant to Section 2.13(c) shall be made available by the Swingline Lender to the Administrative Agent by 3:00 p.m., or such later time as shall have been agreed by the Administrative Agent, on the requested date thereof.

(c) Participations. The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m. on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding; provided, however, that no later than 10:00 a.m. on the fifth Business Day

---



following the making of any Swingline Loan the Swingline Lender shall be required to give such notice with respect to the aggregate principal amount of such Swingline Loan. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Revolving Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.02 with respect to Revolving Loans made by such Revolving Lender (and Section 2.02 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

#### Section 2.05. Special Agent Loans.

(a) Subject to the terms and conditions set forth herein, the Administrative Agent may, in its discretion, from time to time during the Availability Period after the occurrence and during the continuance of a Default (and notwithstanding that any conditions precedent set forth in Section 4.02 are not satisfied at the time), make Special Agent Loans to the Borrower where the Administrative Agent determines that such Special Agent Loans are necessary or desirable (i) to preserve or protect any ABL Collateral, (ii) to enhance the likelihood of, or to maximize the amount of, repayment by the Loan Parties of the Loans and other Obligations or (iii) to pay any costs, fees and expenses, or any amounts due to any LC Issuer with respect to Letters of Credit issued by it, in each case, that are payable under this Credit Agreement and the other Loan Documents; provided, however, that the aggregate principal amount of the Special Agent Loans at any time outstanding will not result in the aggregate amount of the Revolving Exposures exceeding an amount equal to (A) the lesser of (1) the aggregate Commitments at such time, (2) the Borrowing Base at such time and (3) the Facilities Reduction Amount at such time, minus (B) the Availability Block, minus (C) the Specified Reserves at such time, plus (D) the Special Agent Loan Maximum Amount at such time, plus (E) the Overadvance Loan

---

Exposure at such time. The Borrower and each Revolving Lender hereby authorizes the Administrative Agent to make the Special Agent Loans at such time or times as the Administrative Agent determines pursuant to the immediately preceding sentence, and to disburse the proceeds thereof in such manner as shall reasonably be determined by the Administrative Agent (including by making such proceeds available to a third party on behalf of the Borrower). Unless the Borrower shall have provided to the Administrative Agent a written notice to the contrary, the Borrower shall be deemed to have represented and warranted on each date of making of a Special Agent Loan that the representations and warranties of the Borrower and each other Loan Party contained in Article V or in any other Loan Document are true and correct in all material respects on and as of such date as though such representations and warranties had been made on and as of such date, except to the extent that such representations and warranties by their terms relate to an earlier date (in which case the Borrower shall be deemed to have represented and warranted on such date that such representations and warranties are true and correct in all material respects on and as of such earlier date).

(b) Participations. The Administrative Agent may by written notice given to the Revolving Lenders not later than 10:00 a.m. on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Special Agent Loans outstanding. Such notice shall specify the aggregate amount of Special Agent Loans in which Revolving Lenders will participate and each Revolving Lender's Applicable Percentage thereof. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for its own account, such Revolving Lender's Applicable Percentage of such Special Agent Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Special Agent Loans pursuant to this paragraph is unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.02 with respect to Revolving Loans made by such Revolving Lender (and Section 2.02 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders). Any amounts received by the Administrative Agent from the Borrower in respect of a Special Agent Loan after receipt by the Administrative Agent of the proceeds of a sale of participations therein shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph, to the extent of their interests therein. The purchase of participations in a Special Agent Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

#### Section 2.06. Prepayments.

(a) Optional. The Borrower may, upon notice by the Borrower to the Administrative Agent (and, in the case of a prepayment of a Swingline Loan, the Swingline Lender), at any time or from time to time voluntarily prepay Loans in whole or in part; provided that (i) such notice must be received by the Administrative Agent not later than 1:00 p.m. three Business Days prior to the proposed date of prepayment in the case of prepayment of Eurodollar Rate

---

Loans, and one Business Day prior to the proposed date of prepayment in the case of prepayment of Base Rate Loans (or, in the case of any Special Agent Loan, such shorter notice as may be agreed to by the Administrative Agent), and (ii) any such prepayment in part shall be in a principal amount of \$5,000,000 or a whole multiple of \$100,000 in excess thereof (or, in the case of any Special Agent Loan, such smaller amounts as shall be agreed to by the Administrative Agent). Each such notice shall specify the date and amount of such prepayment and the Type of Loans to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice (other than a notice relating solely to Swingline Loans or Special Agent Loans), and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage thereof). Any such prepayment notice given by the Borrower shall be in writing and shall be irrevocable, and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that the Borrower may rescind any such notice of prepayment of all of the Loans in full if the notice of such prepayment stated that it was conditioned on the occurrence of a specified event and such event shall not have occurred.

(b) Mandatory.

(i) In the event and on each date that the aggregate amount of the Revolving Exposures exceeds an amount equal to (A) the lesser of (1) the aggregate Commitments at such time, (2) the Borrowing Base at such time and (3) the Facilities Reduction Amount at such time, minus (B) the Availability Block, plus (C) the Overadvance Maximum Amount at such time, plus (D) the Special Agent Loan Maximum Amount at such time, the Borrower shall repay or prepay Revolving Borrowings or Swingline Loans (or a combination thereof) and, after all Revolving Borrowings and Swingline Loans have been repaid in full, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.03(l), in an aggregate amount equal to such excess. Notwithstanding the foregoing, in the case of any repayment or prepayment required to be made pursuant to this paragraph due to (x) a reduction by the Administrative Agent of the Overadvance Maximum Amount or the Special Agent Loan Maximum Amount or (y) the Borrowing Base in effect at any time, as determined by the Administrative Agent, being less than the amount set forth as the "Borrowing Base" in the Borrowing Base Certificate most recently delivered by the Borrower prior to such time pursuant to Section 2.15(a), 4.01(a), (xi) or 6.17(a) (other than, in the case of clause (y), as a result of any Designated Subsidiary ceasing to be such pursuant to Section 2.15(b) or the consummation of any Disposition), the Borrower shall not be required to make any repayment or prepayment pursuant to this paragraph until the fifth Business Day after the date of notice of such reduction, or of such deficiency, to the Borrower by the Administrative Agent. Any repayment or prepayment made pursuant to this paragraph shall not, in itself, result in a reduction of any Commitment.

(ii) If the Borrower or any of its Subsidiaries Disposes of any assets in a Disposition referred to in Section 7.05(g), (h) or (i), the Borrower shall apply Net Cash Proceeds received therefrom to repay or prepay Revolving Borrowings or Swingline Loans (or a combination thereof) in an aggregate principal amount equal to the lesser of (A) (x) the amount by which the Borrowing Base shall have been reduced as a result of such Disposition (determined as of the date as of which the Borrowing Base was

---

calculated in the Borrowing Base Certificate delivered pursuant to this Agreement on or most recently prior to the date of such Disposition), less (y) the amount of any repayment or prepayment made (or required to be made) pursuant to paragraph (b)(i) above as a result of such reduction in the Borrowing Base, and (B) 100% of such Net Cash Proceeds. Any repayment or prepayment under this paragraph shall be made at such time as shall be determined by the Borrower; provided that, with respect to any Net Cash Proceeds required to be applied to any such repayment or prepayment, such repayment or prepayment shall be made prior to the time when such Net Cash Proceeds would otherwise become "Excess Proceeds" under and as defined in any of the Indentures (or any other indenture governing any Indebtedness of the Borrower), or would otherwise become subject to the requirement that they be applied to make an offer to purchase any Subordinated Notes (or any refinancing Indebtedness in respect thereof).

(iii) Notwithstanding any of the foregoing provisions of this Section 2.06(b) (but subject to the proviso set forth in paragraph (b)(ii) above), with respect to any prepayment of Eurodollar Rate Loans required to be made hereunder, the Borrower may, in its sole discretion, in lieu of prepaying such Loans on the date due deposit, no later than such date due, into a Cash Collateral Account an amount in cash equal to the amount of such required prepayment (including any accrued interest). The Administrative Agent is hereby authorized and directed (without any further action by or notice to or from the Borrower or any other Loan Party) to apply the amounts so deposited to the prepayment of such Loans and accrued interest thereon in accordance with this Section 2.06(b) on the last day of the applicable Interest Period (or, if earlier, the date on which an Event of Default shall have occurred and is continuing).

(c) Generally. Each prepayment of a Borrowing pursuant to this Section 2.06 shall be accompanied by all accrued interest thereon, together with, in the case of Eurodollar Rate Loans, any additional amounts required pursuant to Section 3.05 and shall be applied ratably to the Loans included in the prepaid Borrowing.

#### Section 2.07. Termination, Reduction and Increase of Commitments.

(a) Optional Termination or Reduction. The Borrower may, upon notice to the Administrative Agent, terminate or from time to time permanently reduce the Commitments; provided that (i) any such notice must be received by the Administrative Agent not later than 1:00 p.m. three Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce the Commitments if, after giving effect thereto and any concurrent reimbursement of LC Disbursements and repayment of Borrowings, the aggregate amount of the Revolving Exposures would exceed (A) the aggregate Commitments at such time, minus (B) the Availability Block. Any such termination or reduction notice shall be in writing and shall be irrevocable; provided that the Borrower may rescind any such notice of termination of all of the Commitments if the notice of such termination stated that it was conditioned on the occurrence of a specified event and such event shall not have occurred.

---

(b) Automatic Termination. The Commitments shall automatically terminate on the Maturity Date. The obligation of any LC Issuer to issue, amend, renew or extend any Letter of Credit shall terminate on the Maturity Date.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Commitments under Section 2.07(a) or 2.07(b). Upon any reduction of any of the Commitments, the Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees accrued on the amount of the Commitments so terminated or reduced to, but excluding, the date of any such termination or reduction shall be payable on the effective date of such termination or reduction.

(d) Increase of Commitments. The Borrower may at any time and from time to time, by written notice to the Administrative Agent (which shall promptly deliver a copy thereof to each Lender) executed by the Borrower and one or more financial institutions ("**Increasing Lenders**"), which may include any Lender, cause new Commitments to be extended by the Increasing Lenders (or cause the Commitments of the Increasing Lenders that are already Lenders to be increased, as the case may be) in an amount for each Increasing Lender (which shall not be less than \$5,000,000) set forth in such notice; provided, that (i) the new Commitments and increases in existing Commitments pursuant to this paragraph shall not be greater than \$75,000,000 in the aggregate during the term of this Agreement and shall not be less than \$15,000,000 (or any portion of such \$75,000,000 aggregate amount remaining unused) for any such increase, (ii) each Increasing Lender, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent (which approval shall not be unreasonably withheld or delayed) and (iii) each Increasing Lender, if not already a Lender hereunder, shall become a party to this Agreement by completing and delivering to the Administrative Agent a duly executed accession agreement in a form satisfactory to the Administrative Agent and the Borrower (an "**Accession Agreement**"). New Commitments and increases in Commitments shall become effective on the date specified in the applicable notices delivered pursuant to this paragraph (but not prior to, for any Increasing Lender that is not already a Lender, execution and delivery by such Increasing Lender of an Accession Agreement). Upon the effectiveness of any Accession Agreement to which any Increasing Lender is a party, such Increasing Lender shall thereafter be deemed to be a party to this Agreement and shall be entitled to all rights, benefits and privileges and subject to all obligations of a Lender hereunder. Upon the effectiveness of any New Commitments or increases in existing Commitments, Schedule 2.01 shall be deemed to have been amended to reflect the Commitments of the Increasing Lenders. Notwithstanding the foregoing, no extension of or increase in Commitments pursuant to this paragraph shall become effective unless (A) to the extent requested by the Administrative Agent, the Administrative Agent shall have received documents consistent with those delivered under Section 4.01(a)(iii), (iv), (v), (vi), (vii), and (viii), giving effect to such increase, and (B) on the effective date of such increase, the conditions set forth in Sections 4.02(c) and 4.02(d) shall be satisfied (with all references in such Sections to a Credit Extension being deemed to be references to such extension of or increase in Commitments). On the effective date (the "**Increase Effective Date**") of any extension of or increase in Commitments pursuant to this paragraph (a "**Commitment Increase**"), (1) the aggregate principal amount of the Revolving Borrowings outstanding (the "**Initial Borrowings**") immediately prior to the Commitment Increase on the Increase Effective Date shall be deemed to be paid, (2) each Increasing Lender that shall have had a Commitment prior to the Commitment Increase shall

---

pay to the Administrative Agent in same day funds an amount in Dollars equal to the difference between (I) the product of (x) such Lender's Applicable Percentage (calculated after giving effect to the Commitment Increase) multiplied by (y) the amount of each Subsequent Borrowing (as hereinafter defined) and (II) the product of (x) such Lender's Applicable Percentage (calculated without giving effect to the Commitment Increase) multiplied by (y) the amount of each Initial Borrowing, (3) each Increasing Lender that shall not have had a Commitment prior to the Commitment Increase shall pay to the Administrative Agent in same day funds an amount in Dollars equal to the product of (I) such Increasing Lender's Applicable Percentage (calculated after giving effect to the Commitment Increase) multiplied by (II) the amount of each Subsequent Borrowing, (4) after it receives the funds specified in clauses (2) and (3) above, the Administrative Agent shall pay to each Lender the portion of such funds that is equal to the difference between (I) the product of (x) such Lender's Applicable Percentage (calculated without giving effect to the Commitment Increase) multiplied by (y) the amount of each Initial Borrowing and (II) the product of (x) such Lender's Applicable Percentage (calculated after giving effect to the Commitment Increase) multiplied by (y) the amount of each Subsequent Borrowing, (5) after the effectiveness of the Commitment Increase, the Borrower shall be deemed to have made new Revolving Borrowings (the "**Subsequent Borrowings**") in amounts equal to the amounts of the Initial Borrowings and of the Types and for the Interest Periods specified in a borrowing request delivered to the Administrative Agent in accordance with Section 2.02, (6) each Lender shall be deemed to hold its Applicable Percentage of each Subsequent Borrowing (calculated after giving effect to the Commitment Increase) and (7) the Borrower shall pay each Lender any and all accrued but unpaid interest on its Loans comprising the Initial Borrowings. The deemed payments made pursuant to clause (1) above shall be subject to compensation by the Borrower pursuant to Section 3.05 if the Increase Effective Date occurs other than on the last day of the Interest Period of any Initial Borrowing relating thereto.

Section 2.08. Repayment of Loans. The Borrower hereby unconditionally promises to pay (a) to the Administrative Agent for the account of each Lender (i) the then unpaid principal amount of each Revolving Loan of such Lender on the Maturity Date and (ii) the then unpaid principal amount of each Overadvance Loan of such Lender on the earlier of the Maturity Date and the date that is the first Business Day after the 90th day after such Overadvance Loan is made, (b) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the tenth Business Day after such Swingline Loan is made and (c) to the Administrative Agent the then unpaid principal amount of each Special Agent Loan on the earlier of the Maturity Date and the first Business Day after notice by the Administrative Agent to the Borrower demanding that such Special Agent Loan (or a portion thereof) be repaid (it being understood that if such notice shall demand repayment of only a portion of such Special Agent Loan, only such portion shall be required to be so repaid).

Section 2.09. Interest.

(a) Subject to the provisions of Section 2.09(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing or conversion date at a rate per annum equal to the Base Rate plus the Applicable Rate. All Swingline Loans and all Special Agent Loans shall be Base Rate Loans.

---



(b) If an Event of Default shall have occurred and is continuing under paragraph (f) or (g) of Article VIII and without notice of any kind, or so long as any other Event of Default shall have occurred and is continuing and at the election of the Administrative Agent (or upon the written request of the Required Lenders), then, to the extent permitted by Law, all amounts outstanding under this Agreement and the other Loan Documents shall bear interest (after as well as before judgment), payable on demand, (i) in the case of principal, at the rate otherwise applicable to such Loan pursuant to this Section 2.09 plus 2.00% per annum and (ii) in all other cases, at a rate per annum equal to the rate that would be applicable to a Base Rate Loan plus 2.00% per annum.

(c) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(d) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

#### Section 2.10. Fees.

(a) Commitment Fees. The Borrower agrees to pay to the Administrative Agent, for the account of each Lender, a commitment fee, which shall accrue at the rate of 0.375% per annum on the average daily unused amount of the Commitment of such Lender during the period from and including the Closing Date to but excluding the date on which such Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the Closing Date. For purposes of computing commitment fees pursuant to this Section, a Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender (and the Swingline Exposure and the Special Agent Loan Exposure of such Lender shall be disregarded for such purpose).

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to the Administrative Agent, for the account of each Lender, a participation fee with respect to its participations and commitment to participate in Letters of Credit, which shall accrue at the Applicable Rate applicable to Eurodollar Rate Loans, on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) to each LC Issuer a fronting fee, which shall accrue at a rate separately agreed to by such LC Issuer and the Borrower, on the average daily amount of the portion of the LC Exposure attributable to Letters of Credit issued by such LC Issuer (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date of termination of the

---

Commitments and the date on which there ceases to be any LC Exposure, as well as each LC Issuer's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation Fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Closing Date; provided that any such fees accruing after the date on which the Commitments shall have terminated shall be payable on demand.

(c) Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, a fee in the amount and at the times specified in the Fee Letter.

(d) Generally. Fees payable hereunder shall not be refundable under any circumstances.

Section 2.11. Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by reference to the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of interest and fees shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.12. Evidence of Indebtedness. (a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and the Lenders shall be prima facie evidence absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligations of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent (as set forth in the Register) shall control in the absence of manifest error.

(b) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender and its registered assigns and in a form reasonably approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.06) be represented by one or more promissory notes in such form payable to the order of the payee named therein and its registered assigns.

Section 2.13. Payments Generally; Administrative Agent's Clawback; Administrative Agent's Authority to Request Borrowings; Miscellaneous.

(a) Generally. All payments to be made by the Borrower shall be in Dollars and shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative

---



Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or any LC Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lenders or such LC Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the applicable Lenders or such LC Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such LC Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender, any LC Issuer or the Borrower with respect to any amount owing under this Section 2.13(b) shall be conclusive, absent manifest error.

(c) Administrative Agent's Authority to Request Borrowings. Notwithstanding anything else to the contrary set forth herein, the Administrative Agent may, on behalf of the Borrower, request the making of one or more Revolving Loans or Swingline Loans for the purpose of paying any interest, fees or other amounts due and payable to the Administrative Agent, the Collateral Agent, any Lender or any of their Affiliates under this Agreement or any other Loan Document; provided, however, that (i) the Administrative Agent may only request the making of Base Rate Loans, (ii) in the case of any such request for Revolving Loans, (A) the Administrative Agent shall have notified the Revolving Lenders thereof (including as to the requested date and principal amount thereof) no later than 1:00 p.m. on the requested date of borrowing and (B) the borrowing of such Revolving Loans shall not be subject to the minimum and multiple thresholds set forth in Section 2.02(a) and (iii) in the case of any such request for Swingline Loans, the Administrative Agent shall have notified the Swingline Lender thereof (including as to the requested date and principal amount thereof) no later than 1:00 p.m. on the requested date of borrowing, or such later time as shall have been agreed to by the Swingline Lender. The Borrower hereby authorizes the Administrative Agent to make such requests in the Administrative Agent's discretion, and to apply the proceeds of the requested Loans for the purposes set forth in this Section.

---

(d) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not used as contemplated by this Article II because the conditions precedent thereto set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations required under Section 2.03(d), 2.04(c) or 2.05(c) and to make payments pursuant to Section 9.06 are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any such payments on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, fund its participation or make its payments.

(f) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Insufficient Payment. Subject to Section 4.02 of the ABL Guarantee and Collateral Agreement, if at any time insufficient funds are received by and available to the Administrative Agent to pay in full all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

Section 2.14. Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or any right in respect of the ABL Collateral or otherwise, obtain payment in respect of any principal of or interest on any of the Revolving Loans made by it, or the participations in LC Disbursements, Swingline Loans or Special Agent Loans held by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Revolving Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Revolving Loans and subparticipations in LC Disbursements, Swingline Loans and Special Agent Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements, Swingline Loans and Special Agent Loans, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

---

(ii) the provisions of this Section 2.14 shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or subparticipations in LC Disbursements, Swingline Loans and Special Agent Loans to any assignee or participant, other than to the Borrower or any Subsidiary or other Affiliate thereof (as to which the provisions of this Section 2.14 shall apply) or (C) any payment made to a Non-Consenting Lender pursuant to Section 10.12(b).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation or subparticipation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation or subparticipation as fully as if such Lender were a direct creditor of the Borrower in the amount thereof.

Section 2.15. Concerning the Designated Subsidiaries. (a) The Borrower may at any time and from time to time designate any Domestic Subsidiary that is a Wholly-Owned Subsidiary as a Designated Subsidiary by delivery to the Administrative Agent of a notice to that effect, provided that the effectiveness of such designation is subject to the satisfaction of the following conditions:

(i) If requested by the Administrative Agent, the Administrative Agent shall have received the results of a field examination and appraisal (prepared by a third party appraisal firm selected by the Administrative Agent in consultation with the Borrower) with respect to the assets of such Domestic Subsidiary of the type that would be included in the Borrowing Base, and the results of such examination and appraisal shall be reasonably satisfactory to the Administrative Agent.

(ii) The Administrative Agent shall have received a completed Borrowing Base Certificate, dated as of the date of such designation but calculated as of the date of the most recent Borrowing Base Certificate required to be delivered pursuant to Section 6.17(a)(i) (and giving effect to the designation of such Domestic Subsidiary as a Designated Subsidiary), and signed by a Responsible Officer of the Borrower, which certificate shall be reasonably satisfactory in form and substance to the Administrative Agent.

(iii) The Guarantee and Collateral Requirement with respect to such Domestic Subsidiary shall have been satisfied.

(b) Upon any Designated Subsidiary ceasing to be a Domestic Subsidiary that is a Wholly-Owned Subsidiary, such Designated Subsidiary shall automatically cease to be a Designated Subsidiary hereunder. The Borrower shall provide to the Administrative Agent at least 10 Business Days' prior notice (or such shorter notice as may be agreed to by the Administrative Agent) of any Designated Subsidiary ceasing to be a Domestic Subsidiary that is a Wholly-Owned Subsidiary and, promptly upon request therefor by the Administrative

---

Agent, shall provide to the Administrative Agent such information as may reasonably be requested by the Administrative Agent to determine the portion of the Borrowing Base then in effect that is attributable to the assets of such Designated Subsidiary.

### ARTICLE III

#### TAXES, YIELD PROTECTION AND ILLEGALITY

##### Section 3.01. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrower shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01) an Agent, a Lender or an LC Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify each Agent, each Lender and each LC Issuer, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) paid by such Agent, such Lender or such LC Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto (provided that such penalties, interests and expenses are not attributable to the gross negligence or willful misconduct of such Agent, such Lender or such LC Issuer), whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment, setting forth in reasonable detail the calculation and basis for such amount, delivered to the Borrower by an Agent (other than the Administrative Agent), a Lender or an LC Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an LC Issuer, shall be conclusive absent manifest error.

(d) Change in Place of Organization. The Borrower shall not be required pursuant to this Section 3.01 to pay any additional amount to, or to indemnify, any Agent, any Lender or any LC Issuer, as the case may be, to the extent such Agent, such Lender or LC Issuer becomes subject to Taxes subsequent to the date on which such Agent, such Lender or LC Issuer becomes a party to this Agreement as a result of a change in the place of organization of such Agent, such Lender or LC Issuer, except to the extent that any such change is requested or

---

required by the Borrower (and provided that nothing in this paragraph (d) shall be construed as relieving the Borrower from any obligation to make such payments or indemnification in the event of a Change in Law, including a Change in Law after the date of such change of place of organization).

(e) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower or the relevant Governmental Authority (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to withholding or information reporting requirements.

Without limiting the generality of the foregoing:

(i) any Foreign Lender shall deliver to the Borrower and the Administrative Agent, or to such Persons as they may reasonably designate (in such number of copies as shall be requested by the recipient), on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(A) duly completed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(B) duly completed originals of Internal Revenue Service Form W-8ECI,

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (3) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (B) duly completed originals of Internal Revenue Service Form W-8BEN, or

---

(D) any other form prescribed by applicable Law as a basis for claiming exemption from or reduction in United States Federal withholding tax (including any successor form to those referenced in Sections 3.01(f)(A)-(C)) duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made, and

(ii) any Lender that is not a Foreign Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) a duly completed Internal Revenue Service Form W-9 (or successor form thereto) or shall otherwise prove that it is exempt from backup withholding.

(g) Treatment of Certain Refunds. If any Agent, any Lender or any LC Issuer becomes aware that it is entitled to claim a refund from a Governmental Authority in respect of Indemnified Taxes or Other Taxes paid by the Borrower pursuant to this Section 3.01, such Agent, such Lender or such LC Issuer, as the case may be, shall promptly notify the Borrower of the availability of such refund claim and, within 30 days after receipt of a request by the Borrower, make a claim to such Governmental Authority for such refund. If any Agent, any Lender or any LC Issuer determines, in its reasonable discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of such Agent, such Lender or such LC Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of such Agent, such Lender or such LC Issuer, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Agent, such Lender or such LC Issuer in the event such Agent, such Lender or such LC Issuer is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require any Agent, any Lender or any LC Issuer to make available its tax returns (or any other information relating to its taxes that it reasonably deems confidential) to the Borrower or any other Person.

Section 3.02. Illegality. If any Lender determines in good faith that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate

---

Loans to Eurodollar Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and amounts due pursuant to Section 3.05, if any.

Section 3.03. Inability to Determine Rates. If the Required Lenders determine, for any reason in connection with any request for a making of or conversion to, or continuation as, Eurodollar Rate Loans, that (a) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or (b) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding or maintaining such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice, (i) any Eurodollar Rate Loan requested to be made on the first day of such Interest Period shall be made as a Base Rate Loan, (ii) any Revolving Loans that were to have been converted on the first day of such Interest Period to, or continued as, Eurodollar Rate Loans shall be converted to or continued as Base Rate Loans and (iii) each outstanding Eurodollar Rate Loan, at the end of the Interest Period then applicable thereto, shall be converted to a Base Rate Loan. Each determination by the Administrative Agent pursuant to this Section 3.03 shall be conclusive absent manifest error.

Section 3.04. Increased Costs; Reserves on Eurodollar Rate Loans.

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

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

(ii) subject any Lender or any LC Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit, Swingline Loan or Special Agent Loan or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender or any LC Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and any Excluded Tax); or

(iii) impose on any Lender or any LC Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender, any Letter of Credit or any participation in a Letter of Credit, Swingline Loan or Special Agent Loan;

---



and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Rate Loan (or of maintaining its obligation to make any such Loan), to increase the cost to such Lender of participating in any Letter of Credit, Swingline Loan or Special Agent Loan (or of maintaining its obligation to so participate), or to increase the cost to such LC Issuer of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such LC Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such LC Issuer, the Borrower will pay to such Lender or such LC Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such LC Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any LC Issuer determines that any Change in Law affecting such Lender or such LC Issuer or any Lending Office of such Lender or such Lender's or such LC Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or such LC Issuer's capital or on the capital of such Lender's or such LC Issuer's holding company, if any, as a consequence of this Agreement, the Commitment of such Lender or the Loans made by, or participations in Letters of Credit, Swingline Loans or Special Agent Loans held by, such Lender, or the Letters of Credit issued by such LC Issuer, to a level below that which such Lender or such LC Issuer or such Lender's or such LC Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such LC Issuer's policies and the policies of such Lender's or such LC Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or such LC Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such LC Issuer or such Lender's or such LC Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an LC Issuer setting forth the amount or amounts necessary to compensate such Lender or such LC Issuer or its holding company, as the case may be (which certificate shall set forth in reasonable detail the basis for and calculation thereof), as specified in paragraph (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such LC Issuer, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any LC Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such LC Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or an LC Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such LC Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such LC Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.05. Compensation for Losses. Upon written demand of any Lender to the Borrower (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

---



- (a) any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
- (b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by the Borrower; or
- (c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.12;

excluding any loss of anticipated profits, but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the London Interbank Offered Rate used in determining the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurocurrency market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

#### Section 3.06. Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay, or the Borrower delivers to such Lender and the Administrative Agent a certificate setting forth reasons it reasonably anticipates that the Borrower will be required to pay, any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.02 or 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.12.

---

Section 3.07. Survival. All of the Borrower's and Lenders' obligations under this Article III shall survive termination of the Commitments and repayment of all other Obligations hereunder.

#### ARTICLE IV

##### CONDITIONS PRECEDENT

Section 4.01. Conditions Precedent to Effectiveness. The obligations of the Lenders and the LC Issuers to make any Credit Extension hereunder are subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent shall have received the following, in each case where applicable properly executed by a Responsible Officer of the signing Loan Party, dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and in form and substance satisfactory to the Administrative Agent:

(i) a counterpart of this Agreement signed on behalf of the Borrower and the Subsidiary Loan Parties;

(ii) the ABL Intercreditor Agreement, signed on behalf of each party thereto;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably request to evidence the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(iv) such documents and certifications as the Administrative Agent may reasonably request to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Loan Parties, addressed to each Agent, each Lender and each LC Issuer and dated the Closing Date, and covering such matters as the Administrative Agent may reasonably request;

(vi) a favorable opinion of such local counsel to the Loan Parties, in each case addressed to each Agent, each Lender and each LC Issuer and dated the Closing Date, and covering such matters concerning the Loan Parties and the Loan Documents, as the Administrative Agent may reasonably request;

---

(vii) a certificate of a Responsible Officer of the Borrower either (A) attaching copies of all material consents, licenses and approvals required in connection with the execution, delivery and performance by any Loan Party and the validity against any Loan Party of the Loan Documents to which it is a party, which consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(viii) a certificate of a Responsible Officer of the Borrower certifying that the conditions specified in Sections 4.02(c) and 4.02(d) have been satisfied;

(ix) a certificate from the chief financial officer of the Borrower attesting to the Solvency of the Loan Parties before and after giving effect to the Transactions;

(x) a Perfection Certificate, together with all attachments contemplated thereby, including the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties in the jurisdictions contemplated by the Perfection Certificate and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements are Permitted Liens or have been released; and

(xi) a completed Borrowing Base Certificate and a certificate as to the Unrestricted Cash of the Loan Parties, each dated the Closing Date but calculated (A) with respect to the Borrowing Base, as of August 26, 2007, and (B) with respect to the Unrestricted Cash, as of September 25, 2007, and signed by a Responsible Officer of the Borrower, which certificates shall be reasonably satisfactory in form and substance to the Administrative Agent and shall demonstrate that, as of such date, after giving pro forma effect to the Transactions contemplated to be consummated on the Closing Date (including the making of any Loans requested to be made pursuant to the notice of borrowing referred to in Section 4.02(a)), the sum of (A) the Excess Availability and (B) the Unrestricted Cash of the Loan Parties shall be at least \$100,000,000.

(b) The Guarantee and Collateral Requirement shall have been satisfied.

(c) The Lenders shall have received the financial statements referred to in Section 5.05.

(d) The Lenders shall have received financial projections for the fiscal quarter ending September 30, 2007 and for each of the fiscal years ending September 30, 2008, 2009 and 2010 (with such projections being presented on a quarterly basis, in the case of projections for the fiscal year ending September 30, 2008).

(e) The Administrative Agent shall have received evidence that the insurance required by Section 6.08 and by the ABL Guarantee and Collateral Agreement is in effect.

(f) All fees required to be paid to the Agents and the Arrangers on or before the Closing Date shall have been paid. All costs and expenses (including collateral examination and appraisal fees and legal fees and expenses) required to be paid to the Agents and the Arrangers shall have been paid to the extent due and invoiced.

---

(g) The Arrangers shall have received the results of field examinations and appraisals (prepared by a third party appraisal firm selected by the Arrangers) with respect to the assets included in the Borrowing Base, and the results of such examinations and such appraisals shall in each case be reasonably satisfactory to the Arrangers.

(h) The Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations.

Notwithstanding the foregoing, if the Borrower shall have used commercially reasonable efforts to procure and deliver, but shall nevertheless be unable to deliver, any Deposit Account Control Agreements required to perfect Liens on the ABL Collateral, such delivery shall not be a condition precedent to the obligations of the Lenders or the LC Issuers hereunder on the Closing Date, but shall be required to be accomplished as provided in Section 6.16.

Section 4.02. Conditions Precedent to Each Credit Extension. The obligation of Lenders and the LC Issuers to make any Credit Extension hereunder is subject to the satisfaction of the following additional conditions precedent:

(a) The Administrative Agent shall have received a notice of borrowing under Section 2.02 or, in the case of any Credit Extension in the form of a Swingline Loan or Letter of Credit, the Swingline Lender or the applicable LC Issuer shall have received a request therefor in accordance herewith.

(b) The Borrower shall have delivered evidence reasonably satisfactory to the Administrative Agent that, as of the date of such Credit Extension and after giving effect thereto (and to any prepayments to be made concurrently with such Credit Extension), the aggregate amount of the Revolving Exposures shall not exceed an amount equal to (i) the lesser of (A) the aggregate Commitments at such time, (B) the Borrowing Base at such time and (C) the Facilities Reduction Amount at such time, minus (ii) the Availability Block, minus (iii) the Specified Reserves at such time, plus (iv) the Overadvance Maximum Amount at such time, plus (v) the Special Agent Loan Exposure at such time.

(c) The representations and warranties of the Borrower and each other Loan Party contained in Article V or in any other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension as though such representations and warranties had been made on and as of such date, except to the extent that such representations and warranties by their terms relate to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date).

(d) No Default shall have occurred and be continuing or would result from such proposed Credit Extension or application of the proceeds therefrom.

---

Each Credit Extension (other than any Credit Extension referred to in the next sentence) shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in this Section 4.02. The provisions of this Section 4.02 shall not apply to the conversion of Revolving Loans from one Type to the other or the continuation of Eurodollar Rate Loans, in each case as described in Section 2.02, or to the Special Agent Loans.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

Section 5.01. Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its Subsidiaries (other than any Dormant Subsidiaries) (a) is duly organized or formed and validly existing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations (including good standing), consents and approvals (i) to own or lease its assets and carry on its business and (ii) to execute, deliver and perform its obligations under the Loan Documents to which it is or is to be a party and to consummate the Transactions, (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license and (d) is in compliance with all Laws and licenses, authorizations and permits of Governmental Authorities in favor of such Loan Party, except in the case of clauses (b)(i), (c) and (d), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.02. Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is or is to be a party are within such Loan Party's corporate or other powers, have been duly authorized by all necessary corporate or other organizational action and do not and will not, except to the extent that such breach, contravention or conflict could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) contravene the terms of any of such Loan Party's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien (other than Permitted Liens) under, or require any payment to be made under (i) any Contractual Obligation to which such Loan Party is a party or, to such Loan Party's knowledge, affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject, or (c) violate any Law or any license, authorization or permit of a Governmental Authority reasonably necessarily in the conduct of such Loan Party's business. Each Loan Party and each Subsidiary thereof is in compliance with all Contractual Obligations referred to in clause (b)(i), except to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.03. Governmental Authorization; Other Consents. No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any

---

Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transactions, except those approvals, consents, exemptions, authorizations or other actions the failure of which to obtain or take could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents, other than UCC filings and other filings specifically contemplated by the Collateral Documents, or (d) the exercise by any Agent, any Lender or any LC Issuer of its rights under the Loan Documents or the remedies in respect of the ABL Collateral pursuant to the Collateral Documents, except for (i) filings necessary to perfect the Liens on the ABL Collateral granted by the Loan Parties pursuant to the Collateral Documents and (ii) approvals, consents, exemptions, authorizations, deletions, notices and filings that (A) have been duly obtained, taken, given or made and are in full force and effect or (B) the failure to obtain, take, give or make which could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.04. Binding Effect. This Agreement has been, and each other Loan Document when delivered hereunder will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except to the extent such enforceability may be limited by the effect of applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by equitable principles relating to enforceability.

Section 5.05. Financial Statements; No Material Adverse Effect.

(a) The Borrower has previously made available to the Lenders its consolidated balance sheets and consolidated statements of operations, shareholders' equity and cash flows (i) as of and for the fiscal years ended September 30, 2006, 2005 and 2004, reported on by KPMG LLP, and (ii) as of and for the fiscal quarters ended December 31, 2006, and March 31, 2007. Such financial statements (i) were prepared in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and except, in the case of such quarterly financial statements, the normal year-end audit adjustments and the absence of footnotes, (ii) in all material respects fairly present the financial condition and shareholders' equity of the Borrower and its Subsidiaries as of the dates thereof and their results of operations and cash flows for the periods covered thereby and (iii) show all material Indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the dates thereof, including liabilities for taxes and material commitments.

(b) Except with respect to any events disclosed in the Borrower's Current Reports on Form 8-K dated January 10, 2007, March 12, 2007, May 23, 2007 and May 31, 2007, since September 30, 2006, there has been no event or circumstance that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06. Litigation. Except as disclosed on Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority,

---

against the Borrower or any of its Subsidiaries or against any of their properties or revenues that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07. No Default. Neither the Borrower nor any Subsidiary is in default under or with respect to, or a party to, any Contractual Obligation that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.08. Ownership of Property. The Borrower and each of its Subsidiaries has (a) good title to, or valid leasehold interest in, all of its personal property necessary or used in the ordinary conduct of its business and (b) good, indefeasible and insurable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except where failure to have such title or other property interests could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.09. Environmental Compliance.

(a) The Borrower and its Subsidiaries, and the facilities and properties owned or leased by the Borrower and its Subsidiaries, are and have been in compliance with all Environmental Laws, except for such noncompliance as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) Except as set forth in Schedule 5.09, none of the properties currently or, to the knowledge of the Borrower, formerly owned or operated by the Borrower or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list; and, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Hazardous Materials have not been Released at, on, under or from any property currently or, to the knowledge of the Borrower, formerly owned or operated by the Borrower or any of its Subsidiaries.

(c) Except as set forth on Schedule 5.09 or as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened Release of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by the Borrower or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result, individually or in the aggregate, in a Material Adverse Effect.

(d) There are no pending or threatened claims, actions, suits, proceedings, or investigations against the Borrower or any of its Subsidiaries by any Government Authority or any other party arising under or relating to any Environmental Law, except for such claims, actions, suits, proceedings or investigations that, individually or in the aggregate, are not reasonably likely to result in a Material Adverse Effect.

---



Section 5.10. Insurance. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in the same or similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

Section 5.11. Taxes. The Borrower and its Subsidiaries have filed all material Federal, state and other material tax returns and reports required to be filed, and have paid all material Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those that are not overdue by more than 30 days, (b) those that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (c) to the extent that the failure to make such filings could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against the Borrower or any Subsidiary that would, if made, have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries is party to any tax sharing agreement with any other Person (other than the Borrower and its Subsidiaries) pursuant to which it is liable for any Taxes of any Person that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.12. ERISA Compliance.

(a) Each Plan is in compliance in all material respects with its terms, the applicable provisions of ERISA, the Code and other federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code is so qualified, and to the knowledge of the Borrower, nothing has occurred that could reasonably be expected to cause the loss of such qualification. There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) No ERISA Event has occurred or could reasonably be expected to occur that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect. No Pension Plan has any Unfunded Pension Liability, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) With respect to each scheme or arrangement mandated by a Governmental Authority outside the United States (a “**Foreign Government Scheme or Arrangement**”) and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary of any Loan Party that is not subject to United States law (a “**Foreign Plan**”), except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued in accordance with normal accounting practices;

---



(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

Section 5.13. Subsidiaries; Equity Interests. As of the Closing Date, the Borrower has no Subsidiaries other than those set forth on Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by the Borrower or its Subsidiaries in the amounts specified on Schedule 5.13, free and clear of all Liens except those permitted under Section 7.01(a), (c), (h), (j) or (m). As of the Closing Date, no Loan Party holds Equity Interests in any Person except as set forth on Schedule 5.13.

Section 5.14. Margin Regulations; Investment Company Act.

(a) Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (of the Borrower, or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 7.01 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 8.01(e) will be margin stock.

(b) None of the Borrower, any Person Controlling the Borrower or any Subsidiary of the Borrower is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

Section 5.15. Disclosure. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which the Borrower or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Information Memorandum nor any report, financial statement, certificate or other written or formally presented information furnished by or on behalf of the Loan Parties to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case taken as a whole and as modified or supplemented by other information so furnished) contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the

---

Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time made, it being understood that actual results may vary from such projections, and such variations may be material.

Section 5.16. Intellectual Property; Licenses, Etc. The Borrower and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “*IP Rights*”) that are necessary for the operation of their businesses, without conflict with the rights of any other Person, except to the extent that the failure to so own or possess any such IP Rights (or any conflict pertaining thereto) could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, none of the IP Rights currently used, or currently contemplated to be used, by the Borrower or any of its Subsidiaries infringes upon any valid rights held by any other Person, except to the extent that such infringement could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.16, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.17. Solvency. The Loan Parties are, on a consolidated basis, Solvent.

Section 5.18. Senior Debt Status. On the Closing Date, no Indebtedness or other obligations, other than the Obligations and obligations under the Term Loan Agreement, constitute “Designated Senior Debt” under any of the Indentures.

Section 5.19. Certain Accounts. All of the deposit accounts in the name of or used by any Loan Party maintained at any bank or other financial institution (other than any such account the average daily balance in which did not at any time during the period of five consecutive Business Days ending immediately prior to the date hereof, and will not at any time thereafter, exceed \$1,000,000 for any such account or \$5,000,000 for all such accounts) are set forth on Schedule 5 to the Perfection Certificate, subject to the right of each Loan Party to establish new accounts so long as the Guarantee and Collateral Requirement with respect thereto shall have been satisfied.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan, any LC Disbursement or any interest or fees payable hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding (other than any Letter of Credit the obligations of the Borrower under which shall have been cash collateralized or supported by letters of credit of other banks naming the applicable LC Issuer as the beneficiary in a manner satisfactory to such LC Issuer), the Borrower shall, and, except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03, 6.11 (with respect to any Subsidiary that is a Foreign Subsidiary) and 6.17, shall cause each Subsidiary to:

---

Section 6.01. Financial Statements. Deliver to the Administrative Agent, to be made available to the Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower (or, if later, by the date the Annual Report on Form 10-K of the Borrower for such fiscal year would have been required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for the filing of such form), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all prepared in accordance with GAAP, such consolidated financial statements to be audited and accompanied by a report and opinion of a "big four" national accounting firm or other Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable Securities Laws;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or, if later, by the date the Quarterly Report on Form 10-Q of the Borrower for such fiscal quarter would have been required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for filing of such form), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by the chief financial officer of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event within 91 days after the end of each fiscal year of the Borrower, forecasts prepared by management of the Borrower, in form reasonably satisfactory to the Administrative Agent, of the operating budget and cash flow budget of the Borrower and its Subsidiaries for the succeeding fiscal year, such projections to be accompanied by a certificate of the chief financial officer of the Borrower to the effect that (i) such projections were prepared by the Borrower in good faith, (ii) the Borrower has a reasonable basis for the assumptions contained in such projections and (iii) such projections have been prepared in accordance with such assumptions, it being understood that actual results may vary from such projections, and such variations may be material.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b), but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.01(a) and (b) at the times specified therein.

---

Section 6.02. Certificates; Other Information. Deliver to the Administrative Agent, to be made available to the Lenders:

- (a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;
  - (b) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of a Responsible Officer of the Borrower that all notices required to be provided under Section 6.13 have been provided;
  - (c) promptly after any request by the Administrative Agent, copies of any final management letters submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants;
  - (d) promptly after the same becomes publicly available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements that the Borrower files or is required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered pursuant to this Section 6.02;
  - (e) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of the Borrower or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be delivered pursuant to this Section 6.02;
  - (f) promptly and in any event within five Business Days after receipt thereof by the Borrower or any of its Subsidiaries, notice of receipt of any notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any material investigation or possible material investigation or other material inquiry by such agency regarding financial or other operational results of the Borrower or any of its Subsidiaries, but not copies of any such notice or correspondence;
  - (g) promptly after the occurrence thereof or any material development therein, notice of any Environmental Liability of, or any noncompliance with any Environmental Law or Environmental Permit by, the Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; and
  - (h) promptly, such additional information regarding the business, financial, legal or corporate affairs of the Borrower or any of its Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.
-

Documents required to be delivered pursuant to Section 6.01(a) or (b) or otherwise, to the extent any such documents are included in materials otherwise filed with the SEC, may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date on which (i) the Borrower posts such documents, or provides a link thereto, on the Borrower's principal publicly accessible website or (ii) such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (which may be a commercial or a third-party website or a website sponsored by the Administrative Agent); provided that the Borrower shall notify the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents.

Section 6.03. Notices. Promptly notify the Administrative Agent of:

- (a) the occurrence of any Default;
- (b) the occurrence of any "Default" under and as defined in any Indenture;
- (c) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (d) the occurrence of any ERISA Event; and
- (e) the occurrence of any Internal Control Event.

Each notice pursuant to Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document in respect of which a Default exists.

Section 6.04. Nonpublic Information. Concurrently with the delivery of any document or notice required to be delivered pursuant to Section 6.01, 6.02 or 6.03, indicate in writing whether such document or notice contains Nonpublic Information. The Borrower and each Lender acknowledges that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower, its Subsidiaries or its or their securities) and, if documents or notices required to be delivered pursuant to Section 6.01, 6.02 or 6.03, or otherwise, are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the "**Platform**"), any document or notice that the Borrower has indicated contains Nonpublic Information shall not be posted on that portion of the Platform designated for such public-side Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to Section 6.01, 6.02 or 6.03 contains Nonpublic Information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive Nonpublic Information with respect to the Borrower, its Subsidiaries and its and their securities.

Section 6.05. Payment of Obligations. Pay, discharge or otherwise satisfy as the same shall become due and payable (a) all material tax liabilities, assessments and governmental charges or levies upon it or its assets, unless the same are being contested in good faith by

---

appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary, except to the extent the failure to pay or discharge the same could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and (b) all lawful claims that, if unpaid, would by Law become a Lien upon its assets.

Section 6.06. Preservation of Existence, Etc.

(a) Other than as to Dormant Subsidiaries, preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization, except in a transaction permitted by Section 7.04 or 7.05 and except, other than with respect to the Borrower, to the extent the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(c) preserve or renew all of its registered IP Rights, except to the extent the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.07. Maintenance of Properties. Except with respect to Dormant Subsidiaries and except where the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) maintain, preserve and protect all of its properties and equipment that are necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted, and (b) make all necessary repairs thereto and renewals and replacements thereof in accordance with prudent industry practice.

Section 6.08. Maintenance of Insurance. Maintain, with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties in such amounts (after giving effect to any self-insurance (including with captive insurance companies) compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in the same or similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

Section 6.09. Compliance with Laws. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except where such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or where the failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.10. Books and Records. Maintain proper books of record and account, in which full, true and correct entries shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be, in a manner that permits the preparation of financial statements in accordance with GAAP.

---

Section 6.11. Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at reasonable times during normal business hours, in reasonable intervals and upon reasonable advance notice to the Borrower; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.11 and the Administrative Agent shall not exercise such rights more often than twice during any calendar year and any one such time shall be at the Borrower's expense; provided further, that when an Event of Default exists the Administrative Agent or any Lender may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice to the Borrower. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's accountants.

Section 6.12. Use of Proceeds. Use the proceeds of the Loans solely to repay amounts outstanding under the Term Credit Agreement, to pay fees and expenses related to the Transactions and for working capital and other general corporate purposes of the Borrower and its Subsidiaries not in contravention of any Law or of any Loan Document; and use Letters of Credit solely to support obligations of the Borrower and its Subsidiaries incurred in the ordinary course of business.

Section 6.13. Information Regarding the ABL Collateral; Additional Subsidiaries. (a) Furnish to the Collateral Agent prompt written notice of any change in (i) any Loan Party's legal name, as reflected in its Organization Documents, (ii) any Loan Party's jurisdiction of organization or corporate structure and (iii) any Loan Party's identity, Federal Taxpayer Identification Number or organization number, if any, assigned by the jurisdiction of its organization, and not effect or permit any such change unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the ABL Collateral.

(b) If any material assets constituting ABL Collateral are acquired, or any deposit accounts described in the definition of the term Guarantee and Collateral Requirement are established, by any Loan Party (or held by any Person becoming a Loan Party) after the Closing Date (other than assets that become subject to the Lien created by the ABL Guarantee and Collateral Agreement upon acquisition thereof, but only if such Lien thereon shall be perfected), notify the Collateral Agent thereof and, if requested by the Collateral Agent, cause such assets or accounts to be subjected to a Lien securing the Obligations and take such actions as shall be necessary or reasonably requested by the Collateral Agent to grant and perfect such Liens, all at the expense of the Loan Parties.

(c) If any additional Subsidiary (other than a Dormant Subsidiary or a Foreign Subsidiary) is formed or acquired after the Closing Date or if any Domestic Subsidiary ceases to

---



be a Dormant Subsidiary, notify, within 10 Business Days after such Subsidiary is formed or acquired or ceases to be a Dormant Subsidiary, as the case may be, the Collateral Agent thereof and, promptly thereafter, cause the Guarantee and Collateral Requirement to be satisfied with respect to such Subsidiary.

Section 6.14. Compliance with Environmental Laws. Except to the extent the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, comply, and cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties in accordance with the requirements of all applicable Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action (a) to the extent that its obligation to do so is being contested in good faith and by proper proceedings diligently pursued and appropriate reserves are being maintained in accordance with GAAP with respect to such circumstances or (b) where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.15. Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or the Collateral Agent may reasonably require from time to time in order to cause the Guarantee and Collateral Requirement to be and remain satisfied and assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Administrative Agent or the Collateral Agent, the rights granted or now or hereafter intended to be granted to such Persons under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party is or is to be a party.

Section 6.16. Certain Post-Closing Collateral Obligations. As promptly as practicable, and in any event within 60 days, after the Closing Date, deliver all Deposit Account Control Agreements that would have been required to be delivered on the Closing Date but for the last sentence of Section 4.01, in each case except to the extent otherwise agreed to by the Collateral Agent pursuant to the last two sentences of the definition of the term Guarantee and Collateral Requirement.

Section 6.17. Collateral Reporting. (a) Provide to the Administrative Agent the following documents:

(i) as soon as practicable, and in any event within 15 calendar days, after the end of each fiscal month, a Borrowing Base Certificate, executed and certified on behalf of the Borrower as accurate and complete in all material respects by a Responsible Officer of the Borrower, together with all exhibits, schedules and other supporting information as is provided in the form of such certificate or as the Administrative Agent shall reasonably request;

---



(ii) during the continuance of an Availability Triggering Event, as soon as practicable, and in any event within two Business Days, after the end of the 15th calendar day and the last day of each fiscal month, a certificate signed by a Responsible Officer of the Borrower, in form and detail reasonably satisfactory to the Administrative Agent, setting forth the aggregate Accounts of the Borrower and the Designated Subsidiaries as of such date and the aggregate sales and collections on accounts receivable of the Borrower and the Designated Subsidiaries for the two-week period ending on such date, together with such supporting information as the Administrative Agent shall reasonably request;

(iii) as soon as practicable, and in any event within 30 calendar days, after the end of each fiscal quarter of the Borrower, (A) a summary perpetual inventory report with respect to the Inventory of the Borrower and the Designated Subsidiaries, (B) a summary inventory report, setting forth the Inventory of the Borrower and the Designated Subsidiaries by location and category (and including the amounts of Inventory and the value thereof at any leased locations and at premises of warehousemen, processors or other third parties from time to time in possession of any ABL Collateral), (C) a summary of aging of accounts receivable of the Borrower and the Designated Subsidiaries, together with a reconciliation to the previous fiscal month's aging and general ledger, and (D) a summary aging of accounts payable of the Borrower and the Designated Subsidiaries (and including information indicating the amounts owing to owners and lessors of leased premises, warehouses, processors and other third parties from time to time in possession of any ABL Collateral); and

(iv) such other information with respect to the ABL Collateral as the Administrative Agent shall reasonably request from time to time.

(b) If the Borrower's or any Designated Subsidiary's records or reports with respect to the ABL Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, each of the Borrower and the Designated Subsidiaries hereby irrevocably authorizes such service, contractor, shipper or agent to deliver such records, reports, and related documents to the Administrative Agent and to follow the Administrative Agent's instructions with respect to further services at any time that an Event of Default has occurred and is continuing.

Section 6.18. Evaluations of the Borrowing Base and Related Assets. Permit any representatives designated by the Administrative Agent (including any consultants, accountants, lawyers and appraisers retained by the Administrative Agent) to conduct from time to time evaluations of the Borrower's computation of the Borrowing Base and the assets included in the Borrowing Base (and such other assets and properties of the Borrower or the Subsidiaries as the Administrative Agent may reasonably require), including field examinations and appraisals of such assets, all at reasonable times and upon reasonable advance notice to the Borrower. Notwithstanding the foregoing, it is agreed that not more than one field examination and one appraisal may be conducted in any 12-month period (unless the unused availability under the

---

Borrowing Base shall be less than \$50,000,000 (without giving effect to the Availability Block), in which case not more than two field examinations and appraisals may be conducted in any 12-month period). The Administrative Agent may, in its discretion, at any time when (a) the aggregate amount of the Revolving Exposures minus (b) the Accounts Borrowing Base Availability at such time shall be less than 25% of the Inventory Borrowing Base Availability at such time, waive the collateral appraisal of Eligible Inventory.

## ARTICLE VII

### NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan, any LC Disbursement or any interest or fees payable hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding (other than any Letter of Credit the obligations of the Borrower under which shall have been cash collateralized or supported by letters of credit of other banks naming the applicable LC Issuer as the beneficiary in a manner satisfactory to such LC Issuer), the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

Section 7.01. Liens. Create, incur, assume or suffer to exist any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than the following ("**Permitted Liens**"):

(a) Liens created under any Loan Document;

(b) Liens existing on the Closing Date and set forth on Schedule 7.01(b), and any renewals or extensions thereof; provided that (i) such Liens shall apply only to the assets to which they apply on the Closing Date and (ii) such Liens shall secure only (A) those obligations that they secure on the Closing Date and (B) refinancings, refundings, renewals and extensions of such secured obligations permitted hereunder so long as the aggregate principal amount of obligations secured under this Section 7.01(b) does not exceed at any time the sum of (x) the principal amount of the obligations secured by such Liens on the Closing Date and (y) the aggregate amount of reasonable premiums paid, and fees and expenses reasonably incurred, in connection with such refinancings, refundings, renewals and extensions;

(c) Liens for Taxes, fees, assessments or other governmental charges that are not overdue by more than 30 days or, if more than 30 days overdue, (i) that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (ii) with respect to which in the aggregate the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(d) statutory Liens of landlords, warehousemen, mechanics, materialmen, repairmen or other like Liens arising in the ordinary course of business that secure obligations that are not overdue by more than 30 days or, if more than 30 days overdue, (i) that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (iii) with respect to which in the aggregate the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

---

(e) pledges and deposits made in the ordinary course of business (i) in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA, or (ii) securing insurance premiums or reimbursement obligations under insurance policies, in each case payable to insurance carriers that provide insurance to the Borrower or any of its Subsidiaries;

(f) pledges and deposits made in the ordinary course of business to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety, stay, customs and appeal bonds, performance bonds, performance and completion guarantees and other obligations of a like nature (including those to secure health, safety and environmental obligations);

(g) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and minor title defects affecting real property that do not secure Indebtedness, that are incurred in the ordinary course of business and that do not materially and adversely affect the use of the property subject thereto for its intended purpose;

(h) Liens securing judgments for the payment of money that have not resulted in an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.02(c); provided that (i) such Liens do not at any time encumber any assets other than the assets financed by such Indebtedness or, if applicable, subject to such Capitalized Lease and the proceeds and product thereof and accessions thereto and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the assets being encumbered at the time such assets became so encumbered; provided further, however, that in the event purchase money obligations are owed to any Person with respect to financing of more than one purchase of equipment, Liens securing such purchase money obligations shall be permitted to extend to all equipment so financed by such Person;

(j) Liens securing Indebtedness or other obligations in an aggregate principal amount at any time outstanding not to exceed \$15,000,000; provided that any such Liens that extend to or cover any ABL Collateral shall not secure Indebtedness or other obligations in an aggregate principal amount at any time outstanding in excess of \$10,000,000;

(k) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit or commodity trading or brokerage accounts or other funds maintained with a creditor depository institution, provided that such accounts and funds are not primarily intended by the Borrower or any Subsidiary to provide collateral to the depository institution or the commodity intermediary;

(l) Liens on property of any Subsidiary in favor of the Borrower or any Subsidiary Loan Party;

(m) Liens on property of any Foreign Subsidiary securing Indebtedness of such Foreign Subsidiary permitted under Section 7.02(e);

---

(n) (i) leases, licenses, subleases and sublicenses granted in the ordinary course of business and that do not (A) interfere in any material respect with the business of the Borrower or any of its material Subsidiaries or (B) secure any Indebtedness for borrowed money or (ii) the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Subsidiaries, or by Law to terminate any such lease, license, franchise, grant or permit or to require annual or periodic payments as a condition to the continuance thereof;

(o) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(p) Liens consisting of (i) agreements to Dispose of any property in a Disposition permitted under Section 7.05 and (ii) earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement entered into in connection with an Investment permitted under Section 7.03;

(q) any Lien existing on (i) any asset prior to the acquisition thereof by the Borrower or any Subsidiary or (ii) any asset of any Person that becomes a Subsidiary (or is merged into or consolidated with any Subsidiary) after the date hereof prior to the time such Person becomes a Subsidiary (or is so merged or consolidated); provided that (A) such Lien does not extend to or cover any other assets (other than the proceeds or products of the assets originally subject thereto and, in the case of Liens referred to in clause (ii), after-acquired assets subjected to a Lien pursuant to requirements existing at the time such Person became a Subsidiary (or was so merged or consolidated), other than any such after-acquired assets that would not have been subject to such Lien but for such Person becoming a Subsidiary (or so being merged or consolidated)), (ii) such Lien was not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary (or so being merged or consolidated), as the case may be, and (iii) the Indebtedness secured thereby is permitted under Section 7.02(i);

(r) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Subsidiaries in the ordinary course of business;

(s) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.03;

(t) Liens securing Indebtedness and other obligations under the Term Credit Agreement; provided that the Borrower, the Collateral Agent and the institution serving as collateral agent pursuant to the Term Credit Agreement shall have entered into the ABL Intercreditor Agreement;

(u) Liens that are contractual rights of set-off under agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business; and

(v) Liens securing IRB Debt permitted by Section 7.02(n), provided that Liens extend to and cover only the capital assets and improvements financed with such IRB Debt.

Section 7.02. Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

---

(a) Indebtedness constituting (i) Investments permitted under Section 7.03(c), provided that (A) any such Indebtedness of a Loan Party to a Subsidiary that is not a Subsidiary Loan Party shall be subordinated to the Obligations on terms no less favorable to the Lenders than the terms set forth on Exhibit G, as reasonably determined by the Administrative Agent, and (B) no Domestic Subsidiary of the Borrower shall Guarantee obligations of the Borrower under the Term Credit Agreement unless such Domestic Subsidiary shall have Guaranteed the Obligations, and (ii) Guarantees by the Borrower of (A) Indebtedness of any Foreign Subsidiary permitted under Section 7.02(e) or (B) Indebtedness of any Foreign Subsidiary under a Qualified Foreign Credit Facility;

(b) Indebtedness under the Loan Documents;

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations to finance the purchase, repair or improvement of fixed or capital assets; provided, however, that the aggregate amount of such Indebtedness at any time outstanding shall not exceed \$15,000,000;

(d) Indebtedness (other than Indebtedness of Foreign Subsidiaries) in an aggregate principal amount at any time outstanding not to exceed \$25,000,000;

(e) Indebtedness of Foreign Subsidiaries to Persons other than the Borrower and its Subsidiaries in an aggregate principal amount at any time outstanding not to exceed \$25,000,000, it being understood that any such Indebtedness may be incurred under a Qualified Foreign Credit Facility, subject to the limitation set forth in the definition of such term;

(f) Guarantees resulting from endorsement of negotiable instruments in the ordinary course of business;

(g) obligations in respect of surety, stay, customs and appeal bonds, performance bonds and performance and completion guarantees required in the ordinary course of business or in connection with the enforcement of rights or claims of the Borrower or its Subsidiaries or in connection with judgments that have not resulted in an Event of Default under Section 8.01(h);

(h) Indebtedness outstanding on the date hereof and set forth on Schedule 7.02(h) and any refinancings, refundings, renewals or extensions thereof, provided that (i) the principal amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium paid, and fees and expenses reasonably incurred, in connection with such refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder and (ii) the direct or any contingent obligor with respect thereto is not changed as a result of or in connection with such refinancing, refunding, renewal or extension; provided further that (A) the final maturity and the weighted average life to maturity thereof is no shorter than that of the Indebtedness being refinanced, refunded, renewed or extended and (B) the terms relating to collateral (if any) and subordination (if any), and other material terms (other than interest rates) taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and

---

of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended;

(i) Indebtedness of any Person that becomes a Subsidiary (or is merged into or consolidated with any Subsidiary) after the date hereof as a result of a Permitted Acquisition or is assumed by the Borrower or any of its Subsidiaries in connection with any Permitted Acquisition (provided that (i) such Indebtedness was not incurred in contemplation of such Permitted Acquisition and (ii) the aggregate principal amount of Indebtedness permitted by this Section 7.02(i) shall not exceed \$20,000,000 at any time outstanding), and any refinancings, refunding, renewal or extension thereof that would have been permitted under Section 7.02(h) had such Indebtedness been permitted under such Section;

(j) Indebtedness in respect of netting services, overdraft protections and similar arrangements in each case in connection with cash management and deposit accounts;

(k) Indebtedness consisting of (i) the financing of insurance premiums in the ordinary course of business or (ii) take or pay obligations contained in supply arrangements not to exceed \$100,000,000 in the aggregate;

(l) Indebtedness incurred by the Borrower or any of its Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims and other Indebtedness in respect of bankers' acceptance, letter of credit, warehouse receipts or similar facilities entered into in the ordinary course of business; provided that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within five Business Days following such drawing or incurrence;

(m) Indebtedness under the Term Credit Agreement in an aggregate principal amount not to exceed, at any time, \$1,600,000,000 minus the Facilities Reduction Amount at such time (with the amount of any such Indebtedness denominated other than in Dollars to be determined as the Equivalent in Dollars thereof as of the date of the incurrence thereof);

(n) IRB Debt in an aggregate principal amount at any time outstanding not to exceed \$20,000,000; and

(o) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (n) above.

Section 7.03. Investments. Make or hold any Investments, except:

(a) Investments in Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and its Subsidiaries (i) for travel, entertainment, relocation and analogous ordinary business purposes, in an

---

aggregate amount not to exceed \$5,000,000 at any time outstanding, and (ii) in connection with such Person's purchase of Equity Interests of the Borrower, in an aggregate amount not to exceed \$5,000,000 at any time outstanding, in each case determined without regard to any write-downs or write-offs of such advances;

(c) Investments by the Borrower in any Subsidiary and by any Subsidiary in any other Subsidiary or in the Borrower (except Investments in Equity Interests of the Borrower), provided that the aggregate amount of Investments made since the Term Facility Closing Date by the Loan Parties in Subsidiaries that are not Subsidiary Loan Parties shall not exceed the sum of (i) \$50,000,000, (ii) \$25,000,000 (provided that Investments made in reliance on this clause (ii) shall be used (or, with respect to Investments made prior to the date hereof, shall have been used) by the recipient thereof, promptly upon the receipt thereof, to repay Indebtedness of such recipient or its Subsidiaries (subject to, in the case of any such Indebtedness that is a revolving extension of credit, a corresponding permanent reduction in related commitments)) and (iii) the aggregate amount of dividends paid, or loans or advances repaid, by the Foreign Subsidiaries to, and Investments made by the Foreign Subsidiaries in, the Loan Parties since the Term Facility Closing Date; provided further that, if any such Investment by the Loan Parties in Subsidiaries that are not Subsidiary Loan Parties shall result in the aggregate amount of such Investments (other than Investments made in reliance on clause (ii) above) exceeding \$15,000,000, then, at the time of the making of such Investment, and after giving effect thereto, (A) no Event of Default shall have occurred and be continuing and (B) unless otherwise consented to by the Administrative Agent, the sum of (x) the Excess Availability and (y) the Unrestricted Cash of the Loan Parties shall be at least \$25,000,000;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers made in the ordinary course of business;

(e) Guarantees permitted by Section 7.02;

(f) Investments existing on the date hereof and set forth on Schedule 7.03(f);

(g) Investments by the Borrower in Swap Contracts;

(h) the purchase or other acquisition of all of the Equity Interests in, or all or substantially all of the property and assets constituting a line of business, a business unit or division of, any Person that, upon the consummation thereof, will be owned by the Borrower or a Wholly-Owned Subsidiary (including as a result of a merger or consolidation between such Person and any Subsidiary); provided that no such purchase or other acquisition may be made prior to September 30, 2007 and with respect to each such purchase or other acquisition made thereafter:

(i) all actions required to be taken under Section 6.13 with respect to any Subsidiary that is the surviving or continuing Person in any such merger or consolidation, or any such purchased or otherwise acquired assets, shall have been taken;

(ii) the lines of business of the Person or assets to be so purchased or otherwise acquired shall be reasonably related or similar to one or more lines of business that are the principal lines of businesses of the Borrower and its Subsidiaries;

---



(iii) (A) the total cash and noncash consideration (excluding the fair market value of all Equity Interests of the Borrower (other than any such Equity Interests that would give rise to Indebtedness) issued or transferred to the sellers thereof, but including all indemnities, earnouts and other contingent payment obligations to, and the aggregate amounts paid or to be paid under noncompete, consulting and other affiliated agreements with, the sellers thereof, all write-downs of property and assets and reserves for liabilities with respect thereto and all assumptions of debt, liabilities and other obligations in connection therewith) paid by or on behalf of the Borrower and its Subsidiaries for any such purchase or other acquisition, when aggregated with the total cash and noncash consideration (determined as set forth above) paid by or on behalf of the Borrower and its Subsidiaries for all other purchases and other acquisitions made by the Borrower and its Subsidiaries pursuant to this Section 7.03(h), shall not exceed \$25,000,000 in any fiscal year of the Borrower or (B) such Investment is made solely with the Equity Interests of the Borrower (other than any such Equity Interests that would give rise to Indebtedness);

(iv) immediately before and immediately after giving effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing; and

(v) the Borrower shall have delivered to the Administrative Agent, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this Section 7.03(h) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(i) so long as no Event of Default shall have occurred and be continuing or would result therefrom, other Investments not exceeding \$25,000,000 in the aggregate since the Term Facility Closing Date (with all such Investments valued at the time of Investment at the cash amount thereof, if in cash, the fair market value thereof as determined by the board of directors of the Borrower, if in property, and at the maximum amount thereof if in Guarantees);

(j) bank deposits made in the ordinary course of business;

(k) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05;

(l) Investments in the ordinary course of business consisting of (i) endorsements for collection or deposit and (ii) customary trade arrangements with customers consistent with past practices; and

(m) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of any Person and in settlement of obligations of, or other disputes with, such Persons arising in the ordinary course of business and upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment.

---



Section 7.04. Fundamental Changes. Merge or consolidate with or into another Person, except that, so long as no Event of Default shall have occurred and be continuing or would result therefrom, (a) any Subsidiary may merge or consolidate with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, other than in connection with a merger the purpose of which is to reincorporate the Borrower in another state of the United States so long as (A) the surviving Person expressly assumes all of the obligations of the Borrower under the Loan Documents in a manner reasonably satisfactory to the Administrative Agent and (B) the Borrower shall have complied with its obligations under Section 6.13(a), or (ii) any other Subsidiary; provided that (A) in a merger or consolidation involving the Borrower or a Designated Subsidiary, each Person party to such merger or consolidation (if not the Borrower) shall be a Designated Subsidiary, (B) in a merger or consolidation of any Wholly-Owned Subsidiary with another Subsidiary, the continuing or surviving Person shall be a Wholly-Owned Subsidiary and (C) in a merger or consolidation of any Subsidiary Loan Party with another Subsidiary, the continuing or surviving Person shall be a Subsidiary Loan Party; and (b) in connection with any Permitted Acquisition, a Subsidiary may merge or consolidate with any other Person, provided that the continuing or surviving Person shall be a Wholly-Owned Subsidiary.

Section 7.05. Dispositions. Make any Disposition, except:

- (a) Dispositions of no longer useful or used, surplus, obsolete or worn out assets in the ordinary course of business;
  - (b) Dispositions of inventory in the ordinary course of business;
  - (c) Dispositions of equipment (i) in a transaction where such equipment is exchanged for credit against the purchase price of similar replacement equipment or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement equipment;
  - (d) Dispositions of cash or Cash Equivalents;
  - (e) Dispositions of property by any Subsidiary to the Borrower or by the Borrower or any Subsidiary to any other Subsidiary; provided that (i) if the transferor of such property is a Loan Party, the transferee thereof shall be a Loan Party and (ii) to the extent such transaction constitutes an Investment, such transaction is permitted under Section 7.03;
  - (f) Dispositions permitted under Section 7.06;
  - (g) Disposition of (i) the Home and Garden division of the Borrower, in whole or in part, (ii) assets constituting one or more other divisions or lines of business of the Borrower and its Subsidiaries and (iii) any manufacturing plants or facilities, in each case, made as part of a debt reduction program of the Borrower; provided that at least 75% of the consideration received by the Borrower and its Subsidiaries in any such Disposition shall be in the form of cash and Cash Equivalents;
-

(h) Dispositions not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition, no Event of Default shall have occurred and be continuing or would result therefrom, (ii) the aggregate book value of all property Disposed of in reliance on this Section 7.03(h) shall not exceed \$35,000,000 in any fiscal year of the Borrower or \$100,000,000 since the Term Facility Closing Date and (iii) at least 75% of the consideration received by the Borrower and its Subsidiaries in any such Disposition shall be in the form of cash and Cash Equivalents;

(i) Dispositions of property pursuant to sale and leaseback transactions; provided that (i) at the time of entering into such transaction, no Event of Default shall have occurred and be continuing or would result therefrom, (ii) the aggregate fair market value of all property Disposed of in reliance on this Section 7.03(i) shall not exceed \$15,000,000 (which amount may, with prior approval by the Administrative Agent, be increased to \$25,000,000) since the Term Facility Closing Date and (iii) at least 75% of the consideration received by the Borrower and its Subsidiaries in any such Disposition shall be in the form of cash and Cash Equivalents;

(j) (i) sales or discounts of accounts receivable without recourse arising in the ordinary course of business in connection with the compromise or collection thereof (but not as part of any securitization or factoring arrangement) and (ii) sales or transfers of accounts receivable and related rights by any Foreign Subsidiary pursuant to customary receivables financing facilities or factoring arrangements;

(k) transfers of property that is the subject of a Casualty Event upon receipt of insurance or other proceeds arising from such Casualty Event;

(l) Dispositions of Equity Interests in Dormant Subsidiaries;

(m) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, any buy/sell arrangement or any similar binding arrangement between joint venture parties, in each case, that is in effect on the Closing Date;

(n) Dispositions of accounts receivable pursuant to retailer-mandated factoring programs in an aggregate amount not to exceed \$15,000,000 since the Term Facility Closing Date;

(o) Dispositions set forth on Schedule 7.05; and

(p) Dispositions in the ordinary course of business consisting of abandonment of IP Rights that, in the good faith determination of the Borrower or any Subsidiary, are uneconomical, negligible, obsolete or otherwise not material in the conduct of its business;

provided, however, that any Disposition pursuant to Sections 7.05(a), (b), (c), (g), (h), (i), (n) and (o) shall be made at least for the fair market value of the assets Disposed.

---

Section 7.06. Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, except that:

(a) each Subsidiary may make Restricted Payments to the Borrower or any Subsidiary or, in the case of any Subsidiary that is not a Wholly-Owned Subsidiary, to any other Person that owns a direct Equity Interest in such Subsidiary, ratably in accordance with such Person's ownership of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower and each of its Subsidiaries may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Borrower and each of its Subsidiaries may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issuance of new common Equity Interests of such Person (other than any such issuance to the Borrower or a Subsidiary);

(d) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower and its Subsidiaries may repurchase, retire or otherwise acquire for value common stock or options with respect to common stock held by directors, officers, consultants or employees of the Borrower or any of its Subsidiaries (or any persons that formerly held any such position), or by the estate, family member, spouse or former spouse of any of the foregoing Persons, in each case, (i) pursuant to the exercise by any holder thereof of a right under the equity incentive plans of the Borrower and its Subsidiaries to require such repurchase in connection with any Taxes payable by such holder as a result of vesting, or lapse of restrictions on transfer, of such common stock or options or (ii) in connection with the termination of employment, death or disability of any such director, officer, consultant or employee (or any person that formerly held any such position); provided that such Restricted Payments shall not exceed \$5,000,000 in the aggregate in any calendar year and the price paid for any such common stock or option shall not exceed the market value of such common stock or option at the time paid; and

(e) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may make cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower or its Subsidiaries, provided that any such cash payment shall not be for the purpose of evading the limitations set forth in this Section 7.06 (as determined in good faith by the board of directors of the Borrower (or any authorized committee thereof)).

Section 7.07. Change in Nature of Business. Engage in any material line of business substantially different from the lines of business conducted by the Borrower and its Subsidiaries on the Closing Date or any business reasonably related or ancillary thereto.

Section 7.08. Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than

---

(a) on terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, (b) transactions among the Borrower and its Subsidiaries, (c) dividends, redemptions, repurchases and other transactions permitted under Section 7.06, (d) customary fees payable to any directors of the Borrower and its Subsidiaries and reimbursement of reasonable out-of-pocket costs of the directors of the Borrower and its Subsidiaries, (e) employment and severance arrangements between the Borrower or its Subsidiaries and their respective officers and employees entered into in the ordinary course of business, (f) the payment of customary fees and indemnities to directors, officers and employees of the Borrower and its Subsidiaries in the ordinary course of business and (g) transactions pursuant to any agreement in effect on the Closing Date and set forth on Schedule 7.08, as any such agreement may be amended, supplemented or otherwise modified, provided that the terms thereof following any such amendment, supplement or modifications are not, individually or in the aggregate, more adverse in any material respect to the Loan Parties or the Lenders than the terms thereof in effect on the Closing Date.

Section 7.09. Burdensome Agreements. Enter into, incur or permit to exist any Contractual Obligation that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any Subsidiary or to Guarantee Indebtedness of the Borrower or any Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by Law or by any Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 7.09 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

Section 7.10. Use of Proceeds. Use the proceeds of any Credit Extension to purchase or carry margin stock (within the meaning of Regulation U of the FRB), to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, in each case, in violation of Regulation T or U of the FRB.

Section 7.11. Amendment of Certain Documents. (a) Amend, supplement or otherwise modify any of its Organization Documents, except to the extent any of the foregoing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Amend, supplement or otherwise modify any Indenture, the Term Credit Agreement or any other agreement, instrument or document governing any Material Indebtedness, except to the extent any of the foregoing is not adverse to the interests of the

---

Lenders under the Loan Documents in any material respect and except in connection with any refinancing, refunding, renewal or extension of any Material Indebtedness permitted under Section 7.02(h). Without limiting the generality of the foregoing, the Company hereby agrees that it shall not take any action under the Term Credit Agreement if, after giving effect thereto, the Facilities Reduction Amount shall be less than it was immediately prior thereto.

Section 7.12. Accounting Changes. Make any change in (i) accounting policies or reporting practices, except as required or permitted by GAAP, or (ii) its fiscal year, except with the prior written approval of the Administrative Agent.

Section 7.13. Prepayments, Etc. of Subordinated Indebtedness. Pay or make, or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any subordinated Indebtedness (including the Subordinated Notes), or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any subordinated Indebtedness, except:

- (a) regularly scheduled or other mandatory interest and principal payments as and when due in respect of any such Indebtedness, other than any payments prohibited by the subordination provisions thereof;
- (b) refinancings of such Indebtedness to the extent permitted under Section 7.02; and
- (c) prepayment of Indebtedness of any Loan Party owed to any other Loan Party.

Section 7.14. Speculative Transactions. Enter into any Swap Contract, other than Swap Contracts entered into in the ordinary course of business to hedge or mitigate risks to which the Borrower or any Subsidiary is exposed in the conduct of its business or the management of its liabilities.

Section 7.15. Senior Debt Status. Designate any Indebtedness (other than the Indebtedness under the Loan Documents or under the Term Credit Agreement) of the Borrower or any of its Subsidiaries as “Designated Senior Debt” under and as defined in any of the Indentures.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Any of the following shall constitute an “*Event of Default*”:

- (a) Non-Payment. Any Loan Party shall fail (i) to pay when due any amount of principal of any Loan or any reimbursement obligation in respect of any LC Disbursement, (ii) to pay within three days after the same becomes due, any interest on any Loan or on any LC Disbursement or any fee due hereunder or (iii) to pay within five days after the same becomes due any other amount payable hereunder or under any other Loan Document;
-

(b) Specific Covenants. The Borrower (i) fails to perform or observe any covenant or agreement contained in Section 6.03(a), 6.06(a) (with respect to maintenance of existence of the Borrower to the extent required thereunder) or 6.11 or in Article VII or (ii) fails to perform or observe any covenant or agreement contained in Section 6.01(a), 6.01(b), 6.17(a) and 6.18 and such failure continues unremedied for 15 days;

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the date on which such Loan Party knew or should have known of such failure;

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made;

(e) Cross-Default. (i) Any Loan Party (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) in respect of any Material Indebtedness (other than Indebtedness hereunder) and such failure shall continue after the applicable grace period or (B) fails to observe or perform any other agreement or condition relating to any Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which failure or such other event is to cause, or to permit the holder or holders of Material Indebtedness to cause (after the applicable grace period, with the giving of notice if required), such Material Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Material Indebtedness to be made, prior to its stated maturity; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount;

(f) Insolvency Proceedings, Etc. Any Loan Party institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 days, or an order for relief is entered in any such proceeding;

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due or (ii) any

---

writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy;

(h) Judgments. One or more judgments or orders for the payment of money in an aggregate amount in excess of the Threshold Amount (to the extent not covered by third-party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage) is rendered against the Borrower or any of its Subsidiaries and the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed;

(i) ERISA. (i) An ERISA Event occurs with respect to a Foreign Plan, Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC, or similar liabilities of the Borrower or any Subsidiary under a Foreign Plan, in each case where such liability could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan, or a similar event occurs with respect to any Foreign Plan, in each case where such failure could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(j) Invalidation of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder, including as a result of a transaction permitted under Section 7.04 or 7.05, or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document (other than the ABL Intercreditor Agreement); or the Borrower or the “Required Lenders” under the Term Credit Agreement (or the administrative agent thereunder acting on behalf of such “Required Lenders”) contests in any manner the validity or enforceability of any provision of the ABL Intercreditor Agreement; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document;

(k) Change of Control. There occurs any Change of Control;

(l) Senior Debt Status. The Obligations shall cease to be “Senior Debt” and “Designated Senior Debt” for purposes of any of the Indentures, or any Loan Party shall so assert in writing; or

(m) Collateral Document. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.13 shall for any reason (other than pursuant to the terms thereof, including as a result of a transaction permitted under Section 7.05) cease to create a valid and perfected Lien on and security interest in the Collateral purported to be covered thereby, or any Loan Party shall so assert in writing.

---



Section 8.02. Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

- (a) declare the Commitment of each Lender to be terminated, whereupon such Commitments shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
- (c) require that the Borrower cash collateralize the LC Exposure in accordance with Section 2.03(1); and
- (d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that upon the occurrence any Event of Default with respect to the Borrower described in Section 8.01(f), the Commitments shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to cash collateralize the LC Exposure as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

## ARTICLE IX

### ADMINISTRATIVE AGENT

Section 9.01. Appointment of Agents. GSCP is hereby appointed as the Syndication Agent hereunder, and each Lender hereby authorizes GSCP to act as the Syndication Agent in accordance with the terms hereof and the other Loan Documents. Wachovia is hereby appointed as the administrative agent and as the collateral agent hereunder and under the other Loan Documents, and each Lender hereby authorizes Wachovia to act as the administrative agent and as the collateral agent in accordance with the terms hereof and of the other Loan Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article IX are solely for the benefit of the Agents and the Lenders (and, in the case of Section 9.09, the Arrangers), and no Loan Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any of its Subsidiaries. The Syndication Agent, without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. As of the Closing Date, GSCP, in its capacity as the Syndication Agent, shall have no obligations under this Agreement or any other Loan Document, but shall be entitled to all benefits of this Article IX.

---



Section 9.02. Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities as are expressly specified herein and in the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender; and nothing herein or in any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein.

Section 9.03. General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or of any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to the Lenders or by or on behalf of any Loan Party or any Lender to any Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Revolving Exposure or the component amounts thereof.

(b) Exculpatory Provisions. No Agent or any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Loan Documents, except to the extent caused by such Agent's gross negligence or willful misconduct. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from the Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.01) and, upon receipt of such instructions from the Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons and shall be entitled to rely and shall

---

be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.01).

(c) Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through its Affiliates. The exculpatory, indemnification and other provisions of this Section 9.03 and of Section 9.06 shall apply to the respective Affiliates of the Agents and shall apply to their respective activities in connection with the syndication of the Facility as well as activities as an Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.03 and of Section 9.06 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by any Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the Agent that has appointed such sub-agent, and not to any Loan Party, any Lender or any other Person, and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

Section 9.04. Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with the Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Borrower and any of its Affiliates for services in connection herewith and otherwise without having to account for the same to the Lenders.

Section 9.05. Lenders' Representations, Warranties and Acknowledgments.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of the Borrower and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make

---

its own appraisal of the creditworthiness of the Borrower and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of the Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders.

(b) Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Closing Date, or delivering its signature page to an Assignment and Acceptance, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent or Lenders, as applicable, on the Closing Date.

Section 9.06. Right to Indemnity. Each Lender, in proportion to its Applicable Percentage thereof, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Loan Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Loan Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Applicable Percentage thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

Section 9.07. Successor Agents. The Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders and the Borrower. Upon any such notice of resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent that shall have been approved by the Borrower (such approval not to be unreasonably withheld). Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall promptly (i) transfer to such applicable successor Agent all sums and other items of ABL Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the

---

performance of the duties of such successor Administrative Agent under the Loan Documents, and (ii) in the case of a retiring Administrative Agent, execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. Any resignation of Wachovia or its successor as the Administrative Agent pursuant to this Section 9.07 shall also constitute the resignation of Wachovia or its successor as the Collateral Agent. After any retiring Agent's resignation hereunder as an Agent, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was such Agent hereunder. Any successor Administrative Agent appointed pursuant to this Section 9.07 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereof.

Section 9.08. Collateral Documents and Related Collateral Matters.

(a) Concerning Collateral Agent. Each Secured Party hereby further authorizes the Collateral Agent, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of the Secured Parties with respect to the ABL Collateral and the Collateral Documents; provided that the Collateral Agent shall owe no fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Swap Contract. Subject to Section 10.01, without further written consent or authorization from any Secured Party, the Collateral Agent may execute any documents or instruments necessary to (i) in connection with a Disposition of assets permitted by this Agreement, release any Lien encumbering any item of ABL Collateral that is the subject of such Disposition or to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented or (ii) release any Subsidiary Loan Party from its obligations under the ABL Guarantee and Collateral Agreement or any other Collateral Document in connection with a Disposition (including by merger or consolidation) of all of the Equity Interests of any Subsidiary Loan Party in accordance with the terms hereof or any other transaction with respect to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented.

(b) Right to Realize on ABL Collateral and Enforce Guaranty. Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the Collateral Agent and each other Secured Party hereby agrees that (i) no Secured Party shall have any right individually to realize upon any of the ABL Collateral or to enforce any Guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties, in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent, on behalf of the Secured Parties, and (ii) in the event of a foreclosure by the Collateral Agent on any of the ABL Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Lender may be the purchaser or licensor of any or all of such ABL Collateral at any such sale or other disposition, and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making

---

settlement or payment of the purchase price for all or any portion of the ABL Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the ABL Collateral and of the Guarantees of the Obligations provided under the Loan Documents, to have agreed to the foregoing provisions.

(c) Field Audit, Examination Reports and other Information; Disclaimer by Lenders. By signing this Agreement, each Lender and each LC Issuer:

(i) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report and report with respect to the Borrowing Base prepared or received by the Administrative Agent (each field audit or examination report and report with respect to the Borrowing Base being referred to herein as a “**Report**”), appraisals with respect to the ABL Collateral and financial statements with respect to the Borrower and its Subsidiaries received by the Administrative Agent;

(ii) expressly agrees and acknowledges that no Agent (A) makes any representation or warranty as to the accuracy of any Report, appraisal or financial statement or (B) shall be liable for any information contained in any Report, appraisal or financial statement;

(iii) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Administrative Agent or any other Person performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties’ books and records, as well as on representations of the Loan Parties’ personnel; and

(iv) agrees to keep all Reports confidential and strictly for its internal use in accordance with the terms of Section 10.07 hereof, and not to distribute or use any Report in any other manner.

(d) The Collateral Agent shall have no obligation whatsoever to any Lender, LC Issuer or any other Person to investigate, confirm or assure that the ABL Collateral exists or is owned by any Loan Party or is cared for, protected or insured or has been encumbered, or that any particular items of ABL Collateral meet the eligibility criteria applicable in respect of the Loans or Letters of Credit hereunder, or whether any particular reserves are appropriate, or that the liens and security interests granted to the Collateral Agent pursuant hereto or any of the Loan Documents or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent under this Agreement or in any of the other Loan Documents, it being understood and agreed that in respect of the ABL Collateral, or any act, omission or event related thereto, subject to the other terms and conditions contained herein, the Collateral Agent may act in any manner it may deem appropriate, in its discretion, given the Collateral Agent’s own interest in the ABL Collateral as a Lender and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender or LC Issuer.

---

(e) Agency for Perfection. Each Lender and LC Issuer hereby appoints the Collateral Agent and each other Lender and LC Issuer as agent and bailee for the purpose of perfecting the security interest in and liens upon the ABL Collateral of the Collateral Agent in assets which, in accordance with Article 9 of the UCC, can be perfected only by possession (or where the security interest of a secured party with possession has priority over the security interest of another secured party) and the Collateral Agent and each Lender and LC Issuer hereby acknowledges that it holds possession of any such Collateral for the benefit of the Collateral Agent as secured party. Should any Lender or LC Issuer obtain possession of any such ABL Collateral, such Lender shall notify the Collateral Agent thereof and, promptly upon the Collateral Agent's request therefor, shall deliver such ABL Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions.

Section 9.09. No Arranger Duties. Anything herein to the contrary notwithstanding, no Arranger shall have any duties or responsibilities under this Agreement or any of the other Loan Documents solely in its capacity as an Arranger.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement or of any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or, in the case of any Loan Document other than this Agreement, the applicable Loan Party or Loan Parties and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Article IV, or waiver of any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments, shall not constitute an extension or increase of the Commitment of any Lender);

(b) postpone the maturity of any Loan, the required date of reimbursement of any LC Disbursement or any date for payment of interest or fees (including the Participation Fees) payable hereunder, or forgive, waive or excuse any such payment, repayment or reimbursement or any amount thereof, in each case without the written consent of each Lender directly affected thereby (it being understood that a waiver of any Default or Event Default shall not constitute a postponement of any date fixed for the payment of principal, interest or fees);

(c) reduce the principal amount of, or the rate of interest specified herein on, any Loan or LC Disbursement, or reduce the Participation Fees or any other fees or premiums

---

payable hereunder, in each case without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest or Participation Fees at the Default Rate;

(d) change Section 2.13(f) or 2.14 in a manner that would alter the pro rata sharing of payments required thereby without the prior written consent of each Lender, or change Section 4.02 of the ABL Guarantee and Collateral Agreement in a manner that would alter the priority of payment specified therein;

(e) change any provision of this Section 10.01 or the percentage set forth in the definition of the term Required Lenders or any other provision hereof or of any other Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender;

(f) release all or substantially all of the ABL Collateral from the Liens of the Collateral Documents in any transaction or series of related transactions, without the written consent of each Lender (it being understood that a transaction permitted under Section 7.05 shall not be deemed to constitute a release of all or substantially all of the ABL Collateral from the Liens of the Collateral Documents);

(g) release all or substantially all of the Subsidiary Loan Parties from their Guarantees under the ABL Guarantee and Collateral Agreement (except as expressly provided in Section 9.08) or limit their liability in respect of such Guarantees, without the written consent of each Lender (it being understood that a transaction permitted under Section 7.05 shall not be deemed to constitute a release of all or substantially all of the Guarantees under the ABL Guarantee and Collateral Agreement); or

(h) increase the advance rates used in computing the Borrowing Base, or reduce the Dollar amount specified in the definition of the term “Availability Block”,

in each case without the written consent of the Administrative Agent and each Lender; and provided further that (i) no amendment, waiver or consent shall, unless in writing and signed by an LC Issuer or the Swingline Lender in addition to the Lenders required above, affect the rights or duties of such LC Issuer or the Swingline Lender, respectively, under this Agreement or any other Loan Document and (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent, the Collateral Agent or the Syndication Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent, the Collateral Agent or the Syndication Agent, as the case may be, under this Agreement or any other Loan Document.

In the event that (a) the Borrower or the Administrative Agent has requested the Lenders to consent to a departure from or waiver of any provision of any Loan Document or to agree to any amendment thereof, (b) the consent, waiver or amendment in question requires under this Section 10.01 the agreement of all affected Lenders or all Lenders and (c) the Required Lenders and the Administrative Agent have agreed to such consent, waiver or

---



amendment, then any Lender that does not agree to such consent, waiver or amendment shall be deemed to be a “**Non-Consenting Lender.**” The Borrower shall be entitled to replace any Non-Consenting Lender in accordance with the provisions of Section 10.12.

Section 10.02. Notices and Other Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.02(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, electronic mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, any other Loan Party, any Agent or any LC Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service shall be deemed to have been given when received; notices mailed by certified or registered mail shall be deemed to have been given four Business Days after deposit in the mails postage prepaid; and notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient); provided that no notice to any Agent shall be effective until received by such Agent; provided further that any such notice or other communication shall at the request of any Agent be provided to any sub-agent appointed by it pursuant to Section 9.03(c) hereto, as designated by such Agent from time to time. Notices delivered through electronic communications to the extent provided in Section 10.02(b) shall be effective as provided in such Section.

(b) Electronic Communications. Notices, communications, information, documents and other materials delivered or furnished to the Lenders and the LC Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any LC Issuer pursuant to Article II if such Lender or such LC Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to each of them hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of

---



an acknowledgment from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgment), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. The Platform and any Approved Electronic Communications are provided “as is” and “as available”. None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives (the “*Agent Affiliates*”) warrant the accuracy, adequacy or completeness of the Approved Electronic Communications or the Platform, and each of the Agents expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by any Agent or any Agent Affiliates in connection with the Platform or the Approved Electronic Communications. Each of the Loan Parties understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent. Each of the Loan Parties, the Lenders, the LC Issuers and the other Agents agree that the Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent’s customary document retention procedures and policies.

(d) Change of Address, Etc. The Borrower, any Agent or any LC Issuer may change its address, facsimile number, electronic mail address or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, facsimile number, electronic mail address or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and, if applicable, each LC Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, LC Issuers and Lenders. The Agents, the LC Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of an authorized representative of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent, each LC Issuer, each Lender and the Related Parties of each of the foregoing from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower, other than losses, costs, expenses and liabilities resulting from the gross negligence or willful misconduct

---

of such Person. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03. No Waiver; Cumulative Remedies. No failure by any Lender, any LC Issuer or any Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided hereunder and under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law or otherwise.

Section 10.04. Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower agrees to pay promptly (i) all the actual and reasonable costs and expenses of preparation of the Loan Documents and any consents, amendments, waivers or other modifications thereto; (ii) all the costs of furnishing all opinions by counsel for the Borrower and the other Loan Parties; (iii) the reasonable fees, expenses and disbursements of counsel to the Agents and to either Arranger in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by the Borrower; (iv) all the actual costs and reasonable expenses of creating, perfecting and recording Liens in favor of the Collateral Agent, for the benefit of the Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to any Agent and of counsel providing any opinions that any Agent or Required Lenders may request in respect of the ABL Collateral or the Liens created pursuant to the Collateral Documents; (v) all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers; (vi) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by the Collateral Agent and its counsel) in connection with the custody or preservation of any of the ABL Collateral; (vii) all the reasonable fees (including reasonable and customary internally allocated fees and expenses of employees of the Administrative Agent (which shall be determined on a basis consistent with that disclosed by the Administrative Agent to the Borrower prior to the date hereof) and fees and expenses of any third parties retained by the Administrative Agent to conduct any evaluation or appraisal contemplated by Section 6.18) incurred or charged by the Administrative Agent in connection with evaluations conducted pursuant to Section 6.18; (viii) all other actual and reasonable costs and expenses incurred by any Agent or any Arranger in connection with the syndication of the Loans and Commitments and the negotiation, preparation and execution of the Loan Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (ix) after the occurrence of a Default, all costs and expenses, including reasonable attorneys' fees (excluding allocated costs of internal counsel) and costs of settlement, incurred by any Agent, Lenders and LC Issuers in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents by reason of such Default (including in

---

connection with the sale, lease or license of, collection from, or other realization upon any of the ABL Collateral or the enforcement of any Guarantee of the Obligations) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out” or pursuant to any insolvency or bankruptcy cases or proceedings.

(b) Indemnification by the Borrower. In addition to the payment of expenses pursuant to Section 10.04(a), whether or not the transactions contemplated hereby shall be consummated, the Borrower agrees to defend (subject to Indemnitees’ selection of counsel), indemnify, pay and hold harmless, each Agent, each Arranger, each Lender and each LC Issuer, and the officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and Affiliates of any of the foregoing (each, an “*Indemnitee*”), from and against any and all Indemnified Liabilities; provided that the Borrower shall have no obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of such Indemnitee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.04(b) may be unenforceable in whole or in part because they violate any Law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(c) Waiver of Consequential Damages, Etc. To the extent permitted by applicable Law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and the Borrower hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(d) Payments. All amounts due under this Section 10.04 shall be payable not later than ten Business Days after demand therefor.

(e) Survival. The agreements in this Section 10.04 shall survive the resignation or removal of any Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

Section 10.05. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any LC Issuer or any Lender, or the Administrative Agent, any LC Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such LC Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part

---

thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each LC Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders and the LC Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.06. Successors and Assigns.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders and the Agents. No rights or obligations of the Borrower hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of each Lender. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement

(b) Register. The Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at the Administrative Agent's Office a register for the recordation of the names and addresses of Lenders and the Commitments and Loans of each Lender from time to time (the "Register"). The Register shall be available for inspection by the Borrower or any Lender (with respect to any entry relating to such Lender's Commitments or Loans) at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent shall record, or shall cause to be recorded, in the Register the Commitments and Loans, in accordance with the provisions of this Section 10.06, and each repayment or prepayment in respect of the principal amount of the Loans or any portion thereof, and any such recordation shall be conclusive and binding on the Borrower and each Lender, absent manifest error; provided that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Borrower's obligations hereunder. The Borrower hereby designates Wachovia to serve as the Borrower's agent solely for purposes of maintaining the Register as provided in this Section 10.06(b), and the Borrower hereby agrees that, to the extent Wachovia serves in such capacity, Wachovia and its officers, directors, employees, agents, sub-agents and Affiliates shall constitute "Indemnites."

(c) The Borrower, the Agents and the Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitments or Loans shall be effective, in each case, unless and until recorded in the Register following receipt of an Assignment and Assumption effecting the assignment thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.06(e). Each assignment shall be recorded in the Register on the Business Day the Assignment and Assumption is received by the Administrative Agent, if received by 12:00 p.m., and on the

---

following Business Day if received after such time, prompt notice thereof shall be provided to the Borrower and a copy of such Assignment and Assumption shall be maintained, as applicable. The date of such recordation of an assignment shall be referred to herein as the “*Assignment Effective Date*”. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitment or Loans.

(d) Right to Assign. Each Lender shall have the right at any time to assign to any Eligible Assignee all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment and Loans or of any other Obligations; provided that (i) except in the case of assignments made by GSCP or Wachovia, the Administrative Agent and each LC Issuer must give its prior written consent to such assignment (which consent shall not be unreasonably withheld), (ii) except in the case of an assignment to a Person meeting the criteria of clause (a) of the definition of the term Eligible Assignee, or any assignment made at a time when an Event of Default shall have occurred and be continuing, the Borrower must give its prior written consent to such assignment (which consent shall not be unreasonably withheld), (iii) except in the case of an assignment to a Person meeting the criteria of clause (a) of the definition of the term Eligible Assignee or an assignment of the entire remaining amount of the assigning Lender’s Commitment, the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, (iv) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement and (v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(e) Mechanics. Assignments and assumptions of Loans and Commitments shall be effected by manual execution and delivery to the Administrative Agent of an Assignment and Assumption. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to the Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment and Assumption may be required to deliver pursuant to Section 3.01(f), together with payment to the Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable (i) in connection with an assignment by or to GSCP or Wachovia or any Affiliate thereof or (ii) in the case of an Assignee that is already a Lender or is an Affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the Commitments and Loans; and (iii) it will make or invest in its Commitment and Loans for its own account in the ordinary course and without a view to distribution of such Commitment or Loans within the meaning of the Securities Laws (it being understood that,

---

subject to the provisions of this Section 10.06, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.06, as of the Assignment Effective Date with respect to any Assignment and Assumption, (i) the assignee thereunder shall have the rights and obligations of a Lender hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a Lender for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which expressly survive the termination hereof) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Loan Documents to the contrary notwithstanding, (A) an LC Issuer shall continue to have all rights and obligations thereof with respect to Letters of Credit issued by it hereunder until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder and (B) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); and (iii) the Commitments and Applicable Percentages shall be modified to reflect such assignment.

(h) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than the Borrower, any of its Subsidiaries or any of its other Affiliates) in all or any part of its Commitments, Loans or other Obligations.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder, except with respect to any amendment, waiver or consent described in the first proviso to Section 10.01 that affects such participant.

(iii) The Borrower agrees that each participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(d); provided that (A) a participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant and (B) a participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of the Borrower, to comply with Section 3.01 as though it were a Lender; provided further that, except as specifically set forth in clauses (A) and (B) of this sentence, nothing herein shall require any notice to the Borrower or any other Person in connection with the sale of any participation. To the extent permitted by Law, each participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided (1) such Participant agrees to be subject to Section 2.13 as though it were a Lender and (2) the Borrower is notified of the participation sold to such participant.

---



(i) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.06, any Lender may assign and/or pledge all or any portion of its Loans and the other Obligations owed to such Lender, if any, to secure obligations of such Lender, including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the FRB and any operating circular issued by such Federal Reserve Bank; provided that no Lender, as between the Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge; and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a “Lender” or be entitled to require the assigning Lender to take or omit to take any action hereunder.

Section 10.07. Confidentiality. Each Agent, each Lender and each LC Issuer shall hold all non-public information regarding the Borrower and its Subsidiaries and their businesses identified as such by the Borrower and obtained by such Agent, Lender or LC Issuer pursuant to the requirements hereof in accordance with such Agent’s, Lender’s or LC Issuer’s customary procedures for handling confidential and non-public information of such nature, it being understood and agreed by the Borrower that, in any event, the Agents, the Lenders and the LC Issuers may make (a) disclosures of such information to their respective Affiliates and to their respective agents and advisors (and to other Persons authorized by such Agent, such Lender or such LC Issuer to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.07), (b) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Commitments or Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to the Loan Parties and their obligations (provided that such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 10.07 or other provisions at least as restrictive as this Section 10.07), (c) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential and non-public information relating to the Loan Parties received by it from any Agent or any Lender, and (d) disclosures required or requested by any governmental agency or representative thereof or by the NAIC or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable Law, each Agent, each Lender and each LC Issuer shall make reasonable efforts to notify the Borrower of any request by NAIC or any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Person by such governmental agency), or pursuant to any legal or judicial process, for disclosure of any such non-public information prior to disclosure of such information. In addition, each Agent, each Lender and each LC Issuer may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents.

Section 10.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each LC Issuer is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits

---

(general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or such LC Issuer to or for the credit or the account of any Loan Party against any and all of the Obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such LC Issuer, irrespective of whether or not such Lender or such LC Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or such LC Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and each LC Issuer under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender and such LC Issuer may have. Each Lender and each LC Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not be deemed to affect the validity of such setoff and application.

Section 10.09. Counterparts; Effectiveness; Integration. (a) This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by an electronically mailed scanned copy shall be effective as delivery of a manually executed counterpart of this Agreement. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

(b) This Agreement, the other Loan Documents and the Fee Letter constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Section 10.10. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent, each Lender and each LC Issuer, regardless of any investigation made by any Agent, any Lender or any LC Issuer or on their behalf and notwithstanding that any Agent, any Lender or any LC Issuer may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 10.11. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

---



Section 10.12. Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay or delivers to such Lender and the Administrative Agent a certificate setting forth reasons as to why it reasonably anticipates that it will be required to pay, and such Lender and the Administrative Agent agree with such reasons, any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender ceases to make Eurodollar Rate Loans as a result of a condition described in Section 3.02 or 3.04, if any Lender is a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower or such assignee shall have paid to the Administrative Agent the registration and processing fee specified in Section 10.06(e);

(b) such Lender shall have received payment of an amount equal to the sum of (i) the outstanding principal amount of its Loans and all interest accrued thereon, (ii) all accrued and unpaid Participation Fees owing to such Lender and (iii) all other amounts payable to such Lender hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of the amounts referred to in clauses (i) and (ii)) or the Borrower (in the case of the amounts referred to in clause (iii));

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Law.

A Lender shall not be required to make any such assignment if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment cease to apply.

Section 10.13. Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND

---

ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY AGENT, ANY LENDER OR ANY LC ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 (OTHER THAN BY EMAIL OR OTHER ELECTRONIC COMMUNICATION). NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

Section 10.14. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

---

Section 10.15. Patriot Act. Each Lender and each Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law on October 26, 2001)), it is required to obtain, verify and record information that identifies the Borrower and each Subsidiary Loan Party, which information includes the name and address of the Borrower and the Subsidiary Loan Parties and other information that will allow such Lender or Agent, as applicable, to identify the Loan Parties in accordance with such Act.

Section 10.16. Concerning the ABL Intercreditor Agreement. The Lenders and the LC Issuers acknowledge that obligations of the Borrower under the Term Credit Agreement are secured by Liens on assets of the Borrower and its Subsidiaries that constitute ABL Collateral. Each Lender and LC Issuer hereby irrevocably authorizes and directs the Administrative Agent and the Collateral Agent to execute and deliver the ABL Intercreditor Agreement and any documents relating thereto, in each case, on behalf of such Lender or such LC Issuer and without any further consent, authorization or other action by such Lender or such LC Issuer, and agrees that no Lender or LC Issuer shall have any right of action whatsoever against the Administrative Agent or the Collateral Agent as a result of any action taken by such Agent pursuant to this Section 10.16. The Administrative Agent and the Collateral Agent shall have the benefit of the provisions of Article IX with respect to all actions taken by them pursuant to this Section 10.16 to the full extent thereof.

Section 10.17. Joint and Several Liability of Loan Parties. (a) In order to induce the Lenders and the LC Issuers to extend credit hereunder, and recognizing that (i) the Loan Parties are engaged in an integrated business and (ii) proceeds of Loans made hereunder and Letters of Credit issued hereunder will be available to each Loan Party for working capital and other general corporate purposes, each Loan Party is entering into the ABL Guarantee and Collateral Agreement and agrees that, by virtue of the undertakings set forth therein, it will be jointly and severally liable for all the Obligations, including the principal of and interest on all Loans made, and reimbursement obligations in respect of Letters of Credit issued, hereunder. Each Loan Party further agrees that the Obligations may be extended or renewed, in whole or in part, or amended or modified, without notice to or further assent from it, and that it will remain bound hereunder notwithstanding any such extension or renewal, or amendment or modification, of any Obligation.

(b) Each Loan Party waives presentment to, demand of payment from and protest to any other Loan Party of any of the Obligations, and also waives notice of acceptance of its obligations and notice of protest for nonpayment.

(c) Each Loan Party further agrees that its agreement under this Section 10.17 constitutes a promise of payment when due (whether or not any bankruptcy or similar proceeding shall have stayed the accrual or collection of any of the Obligations or operated as a discharge thereof) and not merely of collection, and waives any right to require that any resort be had by any Secured Party to any balance of any deposit account or credit on the books of any Secured Party in favor of any Loan Party or any other Person.

---

(d) The obligations of each Loan Party under this Section 10.17 shall not be subject to any reduction, limitation, impairment or termination for any reason, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever, by reason of the invalidity, illegality or unenforceability of the Obligations, any impossibility in the performance of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of the Loan Parties under this Section 10.17 shall not be discharged or impaired or otherwise affected by (i) the failure of any Agent or any other Secured Party to assert any claim or demand or to enforce any remedy under this Agreement or any other agreement, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other agreement (other than the indefeasible payment in full in cash of all the Obligations and except to the extent that such Obligations have been explicitly modified pursuant to an amendment or waiver that has become effective in accordance with Section 10.01), (iii) any default, failure or delay, willful or otherwise, in the performance of any of the Obligations or (iv) any other act or omission that may or might in any manner or to any extent vary the risk of such Loan Party or otherwise operate as a discharge of such Loan Party as a matter of law or equity.

(e) Each Loan Party further agrees that its obligations under this Section 10.17 shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Agent or any other Secured Party upon the bankruptcy or reorganization of any other Loan Party or otherwise.

(f) In furtherance of the foregoing and not in limitation of any other right which any Agent or any other Secured Party may have at law or in equity against any Loan Party by virtue of this Section 10.17, upon the failure of any other Loan Party to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Loan Party hereby promises to and will, upon receipt of written demand by any Agent, forthwith pay, or cause to be paid, in cash the amount of such unpaid Obligation.

(g) If by virtue of the provisions set forth herein, any Loan Party is required to pay and shall pay Obligations of another Loan Party, all rights of such Loan Party against such other Loan Party arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinated and junior in right of payment to the prior indefeasible payment in full of all the Obligations.

---

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

SPECTRUM BRANDS, INC., as the Borrower

By: /s/ Anthony L. Genito  
Name: Anthony L. Genito  
Title: Senior Vice President and Chief Financial Officer

[Credit Agreement]

---

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

ROV HOLDING, INC., as a Loan Party

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Vice President and Treasurer

[Credit Agreement]

---

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

ROVCAL, INC., as a Loan Party

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Vice President and Treasurer

[Credit Agreement]

---

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

UNITED INDUSTRIES CORPORATION, as a Loan Party

By: /s/ Robert Prather

Name: Robert Prather

Title: Treasurer and Chief Financial Officer

[Credit Agreement]

---



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

SPECTRUM NEPTUNE US HOLDCO CORPORATION, as a  
Loan Party

By: /s/ Anthony L. Genito  
Name: Anthony L. Genito  
Title: Vice President, Treasurer and Chief Financial Officer

[Credit Agreement]

---

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

SCHULTZ COMPANY, as a Loan Party

By: /s/ Robert Prather

Name: Robert Prather

Title: Treasurer and Chief Financial Officer

[Credit Agreement]

---

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

UNITED PET GROUP, INC., as a Loan Party

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[Credit Agreement]

---

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

DB ONLINE, LLC, as a Loan Party

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[Credit Agreement]

---

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

SOUTHERN CALIFORNIA FOAM, INC., as a Loan Party

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[Credit Agreement]

---

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

AQUARIA, INC., as a Loan Party

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[Credit Agreement]

---

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

AQUARIUM SYSTEMS, INC., as a Loan Party

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[Credit Agreement]

---

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

PERFECTO MANUFACTURING, INC., as a Loan Party

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[Credit Agreement]

---



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

TETRA HOLDING (US), INC., as a Loan Party

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[Credit Agreement]

---

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

WACHOVIA BANK, NATIONAL ASSOCIATION, individually  
and as the Administrative Agent, Collateral Agent and an LC  
Issuer

By: /s/ Joseph L. White

Name: Joseph L. White

Title: Director

GOLDMAN SACHS CREDIT PARTNERS L.P., individually  
and as the Syndication Agent

By: /s/ Bruce H. Mendelsohn

Name: Bruce H. Mendelsohn

Title: Authorized Signatory

[Credit Agreement]

---

LENDER SIGNATURE PAGE TO THE SPECTRUM BRANDS,  
INC. CREDIT AGREEMENT DATED AS OF SEPTEMBER 28,  
2007

Allied Irish Banks, p.l.c.

By: /s/ Albert D. Perez  
Name: Albert D. Perez  
Title: Vice President

For Any Institution requiring a second signature line:

By: /s/ Eanna Mulkeric  
Name: Eanna Mulkeric  
Title: Assistant Vice President

[Credit Agreement]

---

LENDER SIGNATURE PAGE TO THE SPECTRUM BRANDS,  
INC. CREDIT AGREEMENT DATED AS OF SEPTEMBER 28,  
2007

Name of Institution: Bank of America, NA

By: /s/ Lisa Freeman

Name: Lisa Freeman

Title: Senior Vice President

[Credit Agreement]

---

LENDER SIGNATURE PAGE TO THE SPECTRUM BRANDS,  
INC. CREDIT AGREEMENT DATED AS OF SEPTEMBER 28,  
2007

Name of Institution: The CIT GROUP/ COMMERCIAL  
SERVICES, INC.

By: /s/ M. Kim Carpenter  
Name: M. Kim Carpenter  
Title: Vice President

For any Institution requiring a second signature line:

By: \_\_\_\_\_  
Name:  
Title:

[Credit Agreement]

---

LENDER SIGNATURE PAGE TO THE SPECTRUM BRANDS,  
INC. CREDIT AGREEMENT DATED AS OF SEPTEMBER 28,  
2007

Name of Institution: General Electric Capital Corporation

By: /s/ Todd. M. Anderson  
Name: Todd. M. Anderson  
Title: Duly Authorized Signatory

For any Institution requiring a second signature line:

By: \_\_\_\_\_  
Name:  
Title:

[Credit Agreement]

---

LENDER SIGNATURE PAGE TO THE SPECTRUM BRANDS,  
INC. CREDIT AGREEMENT DATED AS OF SEPTEMBER 28,  
2007

Name of Institution: LASALLE BUSINESS CREDIT, LLC

By: /s/ Thomas J. Brennan  
Name: Thomas J. Brennan  
Title: First Vice President

[Credit Agreement]

---

LENDER SIGNATURE PAGE TO THE SPECTRUM  
BRANDS, INC. CREDIT AGREEMENT DATED AS OF  
SEPTEMBER 28, 2007

Landsbanki Commercial Finance, a division of Landsbanki  
Islands hf.

/s/ Tracy Turner

Tracy Turner  
Client Relations Director

/s/ Rebecca MacKenzie

Rebecca MacKenzie  
Associate Director – Analyst

[Credit Agreement]

---





ABL GUARANTEE AND COLLATERAL AGREEMENT

dated as of

September 28, 2007,

among

SPECTRUM BRANDS, INC.,

THE SUBSIDIARIES OF SPECTRUM BRANDS, INC.  
IDENTIFIED HEREIN

and

WACHOVIA BANK, NATIONAL ASSOCIATION,

as the Collateral Agent

---

---

---

TABLE OF CONTENTS

[ARTICLE I](#)

Definitions

<a href="#">SECTION 1.01.</a>	Credit Agreement	1
<a href="#">SECTION 1.02.</a>	Other Defined Terms	1

[ARTICLE II](#)

Guarantee

<a href="#">SECTION 2.01.</a>	Guarantee	5
<a href="#">SECTION 2.02.</a>	Guarantee of Payment	6
<a href="#">SECTION 2.03.</a>	No Limitations	6
<a href="#">SECTION 2.04.</a>	Reinstatement	7
<a href="#">SECTION 2.05.</a>	Agreement To Pay; Subrogation	7
<a href="#">SECTION 2.06.</a>	Information	7

[ARTICLE III](#)

Security Interests in Personal Property

<a href="#">SECTION 3.01.</a>	Security Interest	7
<a href="#">SECTION 3.02.</a>	Representations and Warranties	8
<a href="#">SECTION 3.03.</a>	Covenants	9
<a href="#">SECTION 3.04.</a>	Other Actions	12

[ARTICLE IV](#)

Remedies

<a href="#">SECTION 4.01.</a>	Remedies Upon Default	14
<a href="#">SECTION 4.02.</a>	Application of Proceeds	16

[ARTICLE V](#)

Indemnity, Subrogation and Subordination

<a href="#">SECTION 5.01.</a>	Indemnity and Subrogation	17
<a href="#">SECTION 5.02.</a>	Contribution and Subrogation	17
<a href="#">SECTION 5.03.</a>	Subordination	18

---

[ARTICLE VI](#)

Miscellaneous

<a href="#">SECTION 6.01.</a>	Notices	18
<a href="#">SECTION 6.02.</a>	Waivers; Amendment	18
<a href="#">SECTION 6.03.</a>	Collateral Agent's Fees and Expenses; Indemnification	19
<a href="#">SECTION 6.04.</a>	Successors and Assigns	19
<a href="#">SECTION 6.05.</a>	Survival of Agreement	20
<a href="#">SECTION 6.06.</a>	Counterparts; Effectiveness; Several Agreement	20
<a href="#">SECTION 6.07.</a>	Severability	20
<a href="#">SECTION 6.08.</a>	Right of Set-Off	21
<a href="#">SECTION 6.09.</a>	Governing Law; Jurisdiction; Consent to Service of Process	21
<a href="#">SECTION 6.10.</a>	WAIVER OF JURY TRIAL	22
<a href="#">SECTION 6.11.</a>	Headings	22
<a href="#">SECTION 6.12.</a>	Security Interest Absolute	22
<a href="#">SECTION 6.13.</a>	Termination or Release	22
<a href="#">SECTION 6.14.</a>	Additional Subsidiaries	23
<a href="#">SECTION 6.15.</a>	Collateral Agent Appointed Attorney-in-Fact	23

---

*Schedules*

[Schedule I](#)

Subsidiary Loan Parties

*Exhibits*

[Exhibit I](#)

Form of Supplement

Exhibit II

Form of Perfection Certificate

---

ABL GUARANTEE AND COLLATERAL AGREEMENT dated as of September 28, 2007, among SPECTRUM BRANDS, INC., a Wisconsin corporation (the “*Borrower*”), the SUBSIDIARIES of the Borrower identified herein and WACHOVIA BANK, NATIONAL ASSOCIATION, as the Collateral Agent.

Reference is made to the Credit Agreement dated as of September 28, 2007 (as amended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among the Borrower, the other Loan Parties party thereto, the Lenders party thereto, Wachovia Bank, National Association, as the Administrative Agent, the Collateral Agent and an LC Issuer, and Goldman Sachs Credit Partners L.P., as the Syndication Agent. The Lenders and the LC Issuers have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement. The obligations of the Lenders and the LC Issuers to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. The Subsidiary Loan Parties are, or are Affiliates of, the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders and the LC Issuers to extend such credit. Accordingly, the parties hereto agree as follows:

## ARTICLE I

### Definitions

SECTION 1.01. Credit Agreement. (a) Capitalized terms used in this Agreement (including the preliminary statement hereto) and not otherwise defined herein have the meanings specified in the Credit Agreement. All terms defined in the New York UCC (as defined herein) and not defined in this Agreement or in the Credit Agreement have the meanings specified therein; the term “instrument” shall have the meaning specified in Article 9 of the New York UCC.

(b) The rules of construction specified in Section 1.02 of the Credit Agreement also apply to this Agreement.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“*ABL Collateral*” means any and all of the following assets and property of any Loan Party, whether real, personal or mixed: (a) all Accounts (other than Accounts arising under contracts for the sale of Non-ABL Collateral) and related Records; (b) all Chattel Paper; (c) all Deposit Accounts and all cash, checks and other negotiable instruments, funds and other evidences of payment held therein (but not any identifiable Proceeds of Non-ABL Collateral); (d) all Inventory; (e) solely to the extent evidencing, governing, securing or otherwise related to the items referred to in the preceding clauses (a), (b), (c) and (d), all Documents, General Intangibles (other than Intellectual Property), Instruments, Investment Property and Letter of Credit Rights; (f) all books and

---

records related to the foregoing; and (g) all Proceeds, including insurance Proceeds, of any and all of the foregoing and all collateral, security and guarantees given by any Person with respect to any of the foregoing. Notwithstanding clause (g) of the immediately preceding sentence, “ABL Collateral” shall not include any assets referred to in clauses (a) through (j) and (l) of the definition of “Non-ABL Collateral” that are not included in clause (e) above. All capitalized terms used in this definition and not defined elsewhere in this Agreement have the meanings assigned to them in the New York UCC.

“**Account**” has the meaning assigned to such term in Section 9-102 of the New York UCC.

“**Account Debtor**” means any Person who is or who may become obligated to any Loan Party under, with respect to or on account of an Account.

“**Borrower**” has the meaning assigned to such term in the preliminary statement to this Agreement.

“**Copyright License**” means any written agreement, now or hereafter in effect, granting any right to any third party under any copyright now or hereafter owned by any Loan Party or that such Loan Party otherwise has the right to license, or granting any right to any Loan Party under any copyright now or hereafter owned by any third party, and all rights of such Loan Party under any such agreement.

“**Copyrights**” means all of the following now owned or hereafter acquired by any Loan Party: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, and (b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office.

“**Credit Agreement**” has the meaning assigned to such term in the preliminary statement to this Agreement.

“**Intellectual Property**” means all intellectual and similar property of every kind and nature now owned or hereafter acquired by any Loan Party, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, confidential or proprietary technical and business information, know-how, show-how or other proprietary data or information, rights in software and databases and rights in all embodiments or fixations thereof and rights in related documentation, registrations and franchises, and all additions, improvements and accessions to any of the foregoing.

“**Inventory**” has the meaning assigned to such term in Section 9-102 of the New York UCC.

“**Lender Party**” means each Lender, each Agent, each Arranger, each LC Issuer and each of their respective Affiliates (including any Person that is a Lender, an Agent or an LC Issuer (or that is such an Affiliate) as of the Closing Date but

---

subsequently ceases to be a Lender, an Agent or an LC Issuer (or such an Affiliate), as the case may be, if such Person is a counterparty to any Swap Contract with any Loan Party or provides any cash management services to any Loan Party).

“**License**” means any Patent License, Trademark License, Copyright License or other license or sublicense agreement to which any Loan Party is a party.

“**Loan Parties**” means, collectively, the Borrower and the Subsidiary Loan Parties.

“**New York UCC**” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“**Non-ABL Collateral**” means any and all of the following assets and property of any Loan Party, whether real, personal or mixed: (a) all Investment Property; (b) all Documents; (c) all General Intangibles; (d) all Intellectual Property; (e) all Equipment; (f) all real property (including both fee and leasehold interests) and fixtures; (g) all Instruments; (h) all insurance; (i) all Letter of Credit Rights; (j) all Commercial Tort Claims; (k) all other assets and property not constituting ABL Collateral; (l) all books and records related to the foregoing; and (m) all Proceeds, including insurance Proceeds, of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing. Notwithstanding the foregoing, “Non-ABL Collateral” shall not include any assets or property included in clause (e) of the definition of “ABL Collateral” or any assets or property excluded pursuant to the terms of the Term Collateral Documents. All capitalized terms used in this definition and not defined elsewhere in this Agreement have the meanings assigned to them in the New York UCC.

“**Obligations**” means (a) the due and punctual payment by the Borrower of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Borrower under any Loan Document in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of LC Disbursements, interest thereon (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) and obligations to provide cash collateral and (iii) all other monetary obligations of the Borrower to any of the Secured Parties under the Credit Agreement and each of the other Loan Documents, including expense reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred, and any interest thereon accruing, during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual payment of all the monetary obligations of each other Loan Party under or pursuant to the Credit Agreement and each of the other Loan Documents (including monetary obligations incurred, and any

---



interest thereon accruing, during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (c) the due and punctual payment and performance of all monetary obligations of each Loan Party under each Swap Contract with a counterparty that is a Lender Party (whether such Swap Contract is in effect on the Closing Date or entered into after the Closing Date), other than any such Swap Contract with respect to which the Lender Party that is the counterparty thereto shall have agreed in writing that such Swap Contract shall be deemed not to be a “Swap Contract” for purposes of this clause (c) (a copy of such writing to be delivered to the Collateral Agent), and (d) the due and punctual payment and performance of all monetary obligations of each Loan Party to any Lender Party in respect of cash management services (including treasury, depository, overdraft, credit or debit card (including non-card e-payable services), electronic funds transfer and other cash management arrangements) (other than cash management services provided after (i) the principal of each Loan and all LC Disbursements, interest and fees payable under the Credit Agreement have been paid in full, (ii) all Commitments under the Credit Agreement have been reduced to zero and (iii) no LC Issuer shall have any obligation to issue Letters of Credit under the Credit Agreement and no Letter of Credit shall be outstanding (other than any Letter of Credit the obligations under which have been cash collateralized in full or supported in full by letters of credit of other banks naming the applicable LC Issuer as the beneficiary, in each case, in a manner satisfactory to the applicable LC Issuer)).

“**Patent License**” means any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a patent, now or hereafter owned by any Loan Party or that any Loan Party otherwise has the right to license, is in existence, or granting to any Loan Party any right to make, use or sell any invention on which a patent, now or hereafter owned by any third party, is in existence, and all rights of any Loan Party under any such agreement.

“**Patents**” means all of the following now owned or hereafter acquired by any Loan Party: (a) all letters patent of the United States or the equivalent thereof in any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or the equivalent thereof in any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other country and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

“**Perfection Certificate**” means a certificate substantially in the form of Exhibit II, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by a Responsible Officer of the Borrower.

“**Proceeds**” has the meaning assigned to such term in Section 9-102 of the New York UCC.

---

“**Secured Parties**” means (a) the Lenders, (b) the Administrative Agent, (c) the Collateral Agent, (d) the Syndication Agent, (e) the Arrangers, (f) the LC Issuers, (g) the Lender Parties to whom any of the Obligations are owed and (h) the permitted successors and assigns of each of the foregoing.

“**Security Interest**” has the meaning assigned to such term in Section 3.01(a).

“**Subsidiary Loan Parties**” means (a) the Subsidiaries identified on Schedule I and (b) each other Subsidiary that becomes a party to this Agreement as a Subsidiary Loan Party after the Closing Date.

“**Term Collateral Documents**” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Term Liens**” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Trademark License**” means any written agreement, now or hereafter in effect, granting to any third party any right to use any trademark now or hereafter owned by any Loan Party or that any Loan Party otherwise has the right to license, or granting to any Loan Party any right to use any trademark now or hereafter owned by any third party, and all rights of any Loan Party under any such agreement.

“**Trademarks**” means all of the following now owned or hereafter acquired by any Loan Party: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers and other general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof, and all extensions or renewals thereof and (b) all goodwill associated therewith or symbolized thereby.

## ARTICLE II

### Guarantee

SECTION 2.01. Guarantee. Each Loan Party unconditionally guarantees, jointly with the other Loan Parties and severally, as a primary obligor and not merely as a surety, the due and punctual payment of the Obligations. Each Loan Party further agrees that the Obligations may be extended or renewed, in whole or in part, or amended or modified, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal, or amendment or modification, of any Obligation. Each Loan Party waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

---

SECTION 2.02. Guarantee of Payment. Each Loan Party further agrees that its guarantee hereunder constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any security held for the payment of the Obligations or to any balance of any deposit account or credit on the books of the Collateral Agent or any other Secured Party in favor of the Borrower or any other Person.

SECTION 2.03. No Limitations. (a) Except for termination of a Loan Party's obligations hereunder as expressly provided in Section 6.13, the obligations of each Loan Party hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise of any Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by (i) the failure of the Collateral Agent or any other Secured Party to assert any claim or demand or to enforce any right or remedy under the provisions of any Loan Document or otherwise; (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Loan Party under this Agreement; (iii) the release of, or any impairment of or failure to perfect any Lien on or security interest in, any security held by the Collateral Agent or any other Secured Party for the Obligations or any of them; (iv) any default, failure or delay, wilful or otherwise, in the performance of the Obligations; or (v) any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations). Each Loan Party expressly authorizes the Secured Parties to take and hold security in accordance with the terms of this Agreement and the other Loan Documents for the payment and performance of the Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other Loan Parties or obligors upon or in respect of the Obligations, all without affecting the obligations of any Loan Party hereunder.

(b) To the fullest extent permitted by applicable Law, each Loan Party waives any defense based on or arising out of any defense of the Borrower or any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower or any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations. The Collateral Agent and the other Secured Parties may, at their election, foreclose on any security held by one or more of them in accordance with the terms of this Agreement and the other Loan Documents by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with the Borrower or any other Loan Party or exercise any other right or remedy available to them against the Borrower or any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder

---

except to the extent the Obligations have been fully and indefeasibly paid in full in cash. To the fullest extent permitted by applicable Law, each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against the Borrower or any other Loan Party, as the case may be, or any security.

SECTION 2.04. Reinstatement. Each Loan Party agrees that its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Collateral Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower, any other Loan Party or otherwise.

SECTION 2.05. Agreement to Pay; Subrogation. In furtherance of the foregoing and not in limitation of any other right that the Collateral Agent or any other Secured Party has at law or in equity against any Loan Party by virtue hereof, upon the failure of the Borrower or any other Loan Party to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Loan Party hereby promises to and will forthwith pay, or cause to be paid, to the Collateral Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Obligation. Upon payment by any Loan Party of any sums to the Collateral Agent as provided above, all rights of such Loan Party against the Borrower or any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article V.

SECTION 2.06. Information. Each Loan Party assumes all responsibility for being and keeping itself informed of the Borrower's and each other Loan Party's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Loan Party assumes and incurs hereunder, and agrees that neither the Collateral Agent nor any of the other Secured Parties will have any duty to advise such Loan Party of information known to it or any of them regarding such circumstances or risks.

### ARTICLE III

#### Security Interests in Personal Property

SECTION 3.01. Security Interest. (a) As security for the payment in full of the Obligations, each Loan Party hereby pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest (the "**Security Interest**") in, all right, title or interest in, to and under any and all of the ABL Collateral now owned or at any time hereafter acquired by such Loan Party or in which such Loan Party now has or at any time in the future may acquire any right, title or interest.

---

(b) Each Loan Party hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements with respect to the ABL Collateral or any part thereof and amendments thereto and continuations thereof that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including whether such Loan Party is an organization, the type of organization and any organizational identification number issued to such Loan Party. Each Loan Party agrees to provide such information to the Collateral Agent promptly upon request. Without limiting the foregoing, each Loan Party hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction financing statements that describe the ABL Collateral as “all assets, whether now owned or hereafter acquired” of such Loan Party, or words of similar effect as being of an equal or lesser scope or with greater detail. Each Loan Party also ratifies its authorization for the Collateral Agent to file in any relevant jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(c) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Loan Party with respect to or arising out of the ABL Collateral (other than the duties expressly created hereunder).

SECTION 3.02. Representations and Warranties. The Loan Parties jointly and severally represent and warrant to the Collateral Agent and the other Secured Parties that:

(a) Each Loan Party has good and valid rights in and title to the ABL Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent, for the benefit of the Secured Parties, the Security Interest in such ABL Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained, except to the extent that the failure to have such rights, title, power or authority could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein, including the exact legal name and place of organization of each Loan Party, is correct and complete as of the Closing Date. The Uniform Commercial Code financing statements prepared by the Collateral Agent based upon the information provided to the Collateral Agent in the Perfection Certificate for filing in each governmental, municipal or other office specified in Schedules 2A and 2B to the Perfection Certificate (or specified by notice from the Borrower to the Collateral Agent after the Closing Date in the case of filings, recordings or registrations required by Section 6.13 of the Credit Agreement), are all the filings, recordings and registrations that are necessary to publish notice of, perfect and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent, for the benefit of the Secured Parties, in respect of all ABL Collateral in which the Security Interest may

---

be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary in any such jurisdiction, except as provided under applicable Law with respect to the filing of continuation statements.

(c) The Security Interest constitutes (i) a legal and valid security interest in all the ABL Collateral securing the payment of the Obligations and (ii) subject to the filings described in Section 3.02(b), a perfected security interest in all ABL Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable Law in such jurisdictions. The Security Interest is and shall be prior to any other Lien on any of the ABL Collateral, other than Permitted Liens (but not Term Liens) that have priority as a matter of law.

(d) The ABL Collateral is owned by the Loan Parties free and clear of any Lien, except for Permitted Liens. None of the Loan Parties has filed or consented to the filing of (i) any financing statement or analogous document under the Uniform Commercial Code or any other applicable Law covering any ABL Collateral or (ii) any assignment in which any Loan Party assigns any ABL Collateral or any security agreement or similar instrument covering any ABL Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens.

SECTION 3.03. Covenants. (a) Each Loan Party agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the ABL Collateral owned by it as is consistent with its current practices and its reasonable business judgment, and, at such time or times as the Collateral Agent may reasonably request, promptly to prepare and deliver to the Collateral Agent an updated schedule in form and detail reasonably satisfactory to the Collateral Agent showing the identity, amount and location of any and all ABL Collateral.

(b) Each Loan Party shall, at its own expense, take any and all actions consistent with its current practices and its reasonable business judgment to defend title to the ABL Collateral against all Persons and to defend the Security Interest of the Collateral Agent in the ABL Collateral and the priority thereof against any Lien that is not a Permitted Lien.

(c) Each Loan Party agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements or other documents in connection herewith or

---

therewith. If any amount payable under or in connection with any of the ABL Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be promptly pledged and delivered to the Collateral Agent, duly endorsed in a manner reasonably satisfactory to the Collateral Agent.

(d) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent and such Persons as the Collateral Agent may reasonably designate shall have the right to inspect the ABL Collateral, all records related thereto (and to make extracts and copies from such records) and the premises upon which any of the ABL Collateral is located, to discuss the Loan Parties' affairs with the officers of the Loan Parties and their independent accountants and to verify under reasonable procedures, in accordance with Section 6.11 of the Credit Agreement, the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the ABL Collateral. In the case of Accounts or other ABL Collateral in the possession of any third Person, the Collateral Agent and such Persons as the Collateral Agent may reasonably designate shall have the right to verify, at any time, the validity, amount, quality, quantity, value, condition and status thereof by contacting Account Debtors or the third Person possessing such ABL Collateral for the purpose of making such a verification. The Loan Parties shall be required to pay all reasonable out-of-pocket costs and expenses incurred by the Collateral Agent or any other Person in connection with any inspection or verification referred to in this paragraph.

(e) At its option, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the ABL Collateral and not permitted pursuant to Section 7.01 of the Credit Agreement, may obtain insurance and may pay for the maintenance and preservation of the ABL Collateral to the extent any Loan Party fails to do so as required by the Credit Agreement or this Agreement, and each Loan Party jointly and severally agrees to reimburse the Collateral Agent on demand for any payment made or any expense incurred by the Collateral Agent pursuant to the foregoing authorization; *provided* that nothing in this paragraph shall be interpreted as excusing any Loan Party from the performance of, or imposing any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Loan Party with respect to taxes, assessments, charges, fees, Liens, security interests, insurance or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

(f) If at any time any Loan Party shall take a security interest in any property with a value in excess of \$1,000,000 in the aggregate of an Account Debtor or any other Person to secure payment and performance of an Account, such Loan Party shall promptly assign such security interest to the Collateral Agent, for the benefit of the Secured Parties. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other Person granting the security interest.

(g) Each Loan Party shall remain liable to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the ABL Collateral, all in accordance with the terms

---



and conditions thereof, and the Loan Parties jointly and severally agree to indemnify and hold harmless the Collateral Agent and the other Secured Parties from and against any and all liability for such performance.

(h) If and to the extent requested by the Collateral Agent, each Loan Party agrees that it shall notify each warehouseman, agent, bailee or processor that possesses or controls any Inventory of such Loan Party of the Security Interest and shall use its commercially reasonable efforts to obtain from such warehouseman, agent, bailee or processor an acknowledgement in writing, in form and substance reasonably satisfactory to the Collateral Agent, that such warehouseman, agent, bailee or processor holds such Inventory for the benefit of the Collateral Agent subject to the Security Interest and shall act upon the instructions of the Collateral Agent without further consent from any Loan Party, and that such warehouseman, agent, bailee or processor further agrees to fully subordinate any Lien held by it with respect to such Inventory, whether arising by operation of Law or otherwise, to the Security Interest.

(i) None of the Loan Parties will, without the Collateral Agent's prior written consent, grant any extension of the time of payment of any Accounts included in the ABL Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or grant any credit, discount or allowance whatsoever thereon, other than extensions, compromises, settlements, releases, credits, discounts or allowances granted or made in the ordinary course of business and consistent with its current practices and in accordance with such prudent and standard practice used in industries that are the same as or similar to those in which such Loan Party is engaged. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with Account Debtors or grant any credits, discounts or allowances.

(j) The Loan Parties, at their own expense, shall maintain or cause to be maintained insurance covering physical loss or damage to the Inventory in accordance with the requirements set forth in Section 6.08 of the Credit Agreement. Each Loan Party shall use its commercially reasonable efforts to cause any fire and extended coverage insurance policies maintained by it with respect to any ABL Collateral to be endorsed or otherwise amended to include a lenders' loss payable clause in favor of the Collateral Agent and to provide that it shall not be canceled, modified or not renewed except upon not less than 10 days' prior written notice thereof by the insurer to the Collateral Agent. Each Loan Party irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Loan Party's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of ABL Collateral under policies of insurance, endorsing the name of such Loan Party on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions necessary with respect thereto. In the event that any Loan Party at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto, the Collateral Agent may, without waiving or releasing any obligation or liability of the Loan

---



Parties hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent deems advisable. All sums disbursed by the Collateral Agent in connection with this paragraph, including reasonable out-of-pocket attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Loan Parties to the Collateral Agent and shall be additional Obligations secured hereby.

(k) Each Loan Party shall maintain customary and prudent records of its Chattel Paper and its books, records and documents evidencing or pertaining thereto.

SECTION 3.04. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Security Interest, each Loan Party agrees, in each case at such Loan Party's own expense, to take the following actions with respect to the following ABL Collateral:

(a) *Instruments*. If any Loan Party shall at any time hold or acquire any Instruments that constitute ABL Collateral, such Loan Party shall promptly endorse, assign and deliver the same to the Collateral Agent, accompanied by such undated instruments of endorsement, transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.

(b) *Deposit Accounts*. For each Deposit Account that any Loan Party at any time opens or maintains, such Loan Party shall either (i) cause the depository bank to agree to comply with instructions from the Collateral Agent to such depository bank directing the disposition of funds from time to time credited to such Deposit Account, without further consent of such Loan Party or any other Person, pursuant to an agreement reasonably satisfactory to the Collateral Agent, or (ii) arrange for the Collateral Agent to become the customer of the depository bank with respect to the Deposit Account, with the Loan Party being permitted, only with the consent of the Collateral Agent, to exercise rights to withdraw funds from such Deposit Account. The Collateral Agent agrees with each Loan Party that the Collateral Agent shall not give any such instructions or withhold any withdrawal rights from any Loan Party except during the continuance of an Availability Triggering Event or if an Event of Default has occurred and is continuing or, after giving effect to any withdrawal, would occur. The provisions of this paragraph shall not apply to (A) Deposit Accounts for which the Collateral Agent is the depository bank and (B) any Deposit Account the average daily balance in which does not exceed \$1,000,000 for any such account individually, and \$5,000,000 for all such accounts in the aggregate, at any time.

(c) *Investment Property*. If any Investment Property now or hereafter acquired by any Loan Party is held by such Loan Party or its nominee through a securities intermediary, and such Investment Property constitutes ABL Collateral, such Loan Party shall immediately notify the Collateral Agent thereof and, at the Collateral Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (i) use

---

commercially reasonable efforts to cause such securities intermediary to agree to comply with entitlement orders or other instructions from the Collateral Agent to such securities intermediary as to such security entitlements without further consent of any Loan Party or such nominee, or (ii) in the case of Financial Assets or other Investment Property held through a securities intermediary, use commercially reasonable efforts to arrange for the Collateral Agent to become the entitlement holder with respect to such Investment Property, with the Loan Party being permitted, only with the consent of the Collateral Agent, to exercise rights to withdraw or otherwise deal with such Investment Property. The Collateral Agent agrees with each of the Loan Parties that the Collateral Agent shall not give any such entitlement orders or instructions or directions to any such issuer or securities intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by any Loan Party, except during the continuance of an Availability Triggering Event or if an Event of Default has occurred and is continuing or, after giving effect to any such investment and withdrawal rights, would occur. The provisions of this paragraph shall not apply to (A) any Financial Assets credited to a securities account for which the Collateral Agent is the securities intermediary and (B) any securities account the value of securities or other Investment Property in which does not exceed \$1,000,000 for any such account individually, and \$5,000,000 for all such accounts in the aggregate, at any time.

(d) *Electronic Chattel Paper and Transferable Records.* If any Loan Party at any time holds or acquires an interest in any electronic chattel paper or any “transferable record,” as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction of an amount in excess of \$1,000,000, such Loan Party shall promptly notify the Collateral Agent thereof and, at the request of the Collateral Agent, shall take such action as the Collateral Agent may reasonably request to vest in the Collateral Agent control under New York UCC Section 9-105 of such electronic chattel paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Collateral Agent agrees with such Loan Party that the Collateral Agent will arrange, pursuant to procedures reasonably satisfactory to the Collateral Agent and so long as such procedures will not result in the Collateral Agent’s loss of control, for the Loan Party to make alterations to the electronic chattel paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Loan Party with respect to such electronic chattel paper or transferable record.

---

(e) *Letter-of-Credit Rights*. If any Loan Party is at any time a beneficiary under a letter of credit now or hereafter issued in favor of such Loan Party in a face amount in excess of \$1,000,000, and such letter of credit constitutes ABL Collateral, such Loan Party shall promptly notify the Collateral Agent thereof and, at the request and option of the Collateral Agent, such Loan Party shall, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (i) use commercially reasonable efforts to arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under such letter of credit or (ii) use commercially reasonable efforts to arrange for the Collateral Agent to become the transferee beneficiary of such letter of credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under such letter of credit are to be paid to the applicable Loan Party unless an Event of Default has occurred or is continuing.

## ARTICLE IV

### Remedies

SECTION 4.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Loan Party agrees to deliver, on demand, each item of ABL Collateral to the Collateral Agent or any Person designated by the Collateral Agent, and it is agreed that the Collateral Agent shall have the right to take possession of the ABL Collateral and without liability for trespass to enter any premises where the ABL Collateral may be located for the purpose of taking possession of or removing the ABL Collateral and, generally, to exercise any and all rights afforded to a secured party under the Uniform Commercial Code or other applicable Law, in each case at the same or different times, with or without legal process and with or without prior notice or demand for performance. Without limiting the generality of the foregoing, each Loan Party agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable Law, to sell or otherwise dispose of all or any part of the ABL Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized at any such sale of securities (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the ABL Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the ABL Collateral so sold. Each such purchaser at any sale of ABL Collateral shall hold the property sold absolutely, free from any claim or right on the part of any Loan Party, and each Loan Party hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which such Loan Party now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

---

The Collateral Agent shall give the applicable Loan Parties at least 10 days' written notice (which each Loan Party agrees is reasonable notice within the meaning of Section 9-611 of the New York UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of ABL Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the ABL Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the ABL Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any ABL Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such ABL Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the ABL Collateral is made on credit or for future delivery, the ABL Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent and the other Secured Parties shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the ABL Collateral so sold and, in case of any such failure, such ABL Collateral may be sold again upon like notice. At any public (or, to the extent permitted by applicable Law, private) sale made pursuant to this Agreement, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Loan Party (all said rights being also hereby waived and released to the extent permitted by law), the ABL Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Loan Party as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Loan Party therefor. For purposes hereof, a written agreement to purchase the ABL Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Loan Party shall be entitled to the return of the ABL Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the ABL Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 4.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the New York UCC or its equivalent in other jurisdictions.

---

SECTION 4.02. Application of Proceeds. The Collateral Agent shall apply the proceeds of any collection or sale of ABL Collateral, including any ABL Collateral consisting of cash, as follows:

FIRST, to the payment of all Obligations consisting of (a) fees due under the Credit Agreement (including fees under Section 2.10 of the Credit Agreement), (b) costs and expenses incurred by the Collateral Agent in connection with such collection or sale or otherwise in connection with this Agreement, any other Loan Document or any of the Obligations, including all court costs and the reasonable out-of-pocket fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document and (c) all other obligations in the nature of indemnification and reimbursement of costs and expenses (including obligations under Section 10.04 of the Credit Agreement and Section 6.03 of this Agreement), with the amounts referred to in this clause FIRST so applied to be distributed among the Secured Parties entitled thereto pro rata in accordance with the amounts of such Obligations owed to them on the date of any such distribution;

SECOND, to the payment of all Obligations consisting of interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans (including Special Agent Loans), with the amounts so applied to be distributed among the Secured Parties entitled thereto pro rata in accordance with the amounts of such interest owed to them on the date of any such distribution;

THIRD, to the payment in full of the aggregate principal amount of all the Special Agent Loans;

FOURTH, to the payment in full of the aggregate principal amount of all the Swingline Loans;

FIFTH, to the payment in full of the aggregate principal amount of all other Loans, with the amounts so applied to be distributed among the Secured Parties entitled thereto pro rata in accordance with the amounts of such principal owed to them on the date of any such distribution;

SIXTH, to the payment (or, in the case of outstanding Letters of Credit, cash collateralization) in full of all the Obligations not referred to in clauses FIRST through FIFTH above or clause SEVENTH below, with the amounts so applied to be distributed among the Secured Parties entitled thereto pro rata in accordance with the amounts of such Obligations owed to them on the date of any such distribution;

---

SEVENTH, to the payment in full of all the Obligations referred to in clauses (c) and (d) of the definition of the term “Obligations”, the amounts so applied to be distributed among the Secured Parties entitled thereto pro rata in accordance with the amounts of such Obligations owed to them on the date of any such distribution; and

EIGHTH, to the Loan Parties, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of ABL Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the ABL Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

## ARTICLE V

### Indemnity, Subrogation and Subordination

SECTION 5.01. Indemnity and Subrogation. In addition to all such rights of indemnity and subrogation as the Loan Parties may have under applicable Law (but subject to Section 5.03), the Borrower agrees that (a) in the event a payment of an Obligation of the Borrower shall be made by any Subsidiary Loan Party under this Agreement, the Borrower shall indemnify such Subsidiary Loan Party for the full amount of such payment and such Subsidiary Loan Party shall be subrogated to the rights of the Person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Subsidiary Loan Party shall be sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part an obligation of the Borrower owed to any Secured Party, the Borrower shall indemnify such Subsidiary Loan Party in an amount equal to the greater of the book value or the fair market value of the assets so sold.

SECTION 5.02. Contribution and Subrogation. Each Subsidiary Loan Party (a “**Contributing Party**”) agrees (subject to Section 5.03) that, in the event a payment shall be made by any other Subsidiary Loan Party hereunder in respect of any Obligation or assets of any other Subsidiary Loan Party shall be sold pursuant to any Security Document to satisfy any Obligation (other, in each case, than an Obligation for the incurrence of which such other Subsidiary Loan Party received fair and adequate consideration) and such other Subsidiary Loan Party (the “**Claiming Party**”) shall not have been fully indemnified by the Borrower as provided in Section 5.01, the Contributing Party shall indemnify the Claiming Party in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets, as the case may be, in each case multiplied by a fraction of which the numerator shall be the net worth of the Contributing Party on the date hereof and the denominator shall be

---

the aggregate net worth of all the Subsidiary Loan Parties on the date hereof (or, in the case of any Subsidiary Loan Party becoming a party hereto pursuant to Section 6.14, the date of the supplement hereto executed and delivered by such Subsidiary Loan Party). Any Contributing Party making any payment to a Claiming Party pursuant to this Section 5.02 shall be subrogated to the rights of such Claiming Party under Section 5.01 to the extent of such payment.

SECTION 5.03. Subordination. (a) Notwithstanding any provision of this Agreement to the contrary, all rights of the Loan Parties under Sections 5.01 and 5.02 and all other rights of indemnity, contribution or subrogation under applicable Law or otherwise shall be fully subordinated to the indefeasible payment in full in cash of the Obligations. No failure on the part of the Borrower or any other Loan Party to make the payments required by Sections 5.01 and 5.02 (or any other payments required under applicable Law or otherwise) shall in any respect limit the obligations and liabilities of any Loan Party with respect to its Obligations hereunder, and each Loan Party shall remain liable for the full amount of the Obligations of such Loan Party hereunder.

(b) Each Loan Party hereby agrees that all Indebtedness and other monetary obligations owed by it to any other Loan Party or any other Subsidiary shall be fully subordinated to the indefeasible payment in full in cash of the Obligations.

## ARTICLE VI

### Miscellaneous

SECTION 6.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.02 of the Credit Agreement. All communications and notices hereunder to any Subsidiary Loan Party shall be given to it in care of the Borrower as provided in Section 10.02 of the Credit Agreement.

SECTION 6.02. Waivers; Amendment. (a) No failure or delay by the Collateral Agent, any other Agent, any LC Issuer or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent and the other Secured Parties hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 6.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Collateral Agent, any other Agent, any Arranger, any Lender or any LC Issuer may have had notice or knowledge of such Default at the time. No notice or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

---



(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Required Lenders and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, and acknowledged by the Administrative Agent, subject to any consent required in accordance with Section 10.01 of the Credit Agreement and the other terms of such Section.

SECTION 6.03. Collateral Agent's Fees and Expenses; Indemnification. (a) The parties hereto agree that the Collateral Agent shall be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.04(a) of the Credit Agreement.

(b) Without limitation of its indemnification obligations under the other Loan Documents, each Loan Party jointly and severally agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless the Collateral Agent and the other Indemnitees (as defined in Section 10.04(b) of the Credit Agreement) from and against any and all Indemnified Liabilities; *provided* that no Loan Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liability to the extent such Indemnified Liability arises from the gross negligence or wilful misconduct of such Indemnitee. To the extent permitted by applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) Any such amounts payable as provided hereunder shall be additional Obligations secured hereby and by the other Loan Documents. The provisions of this Section 6.03 shall remain in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section 6.03 shall be payable promptly after written demand therefor.

SECTION 6.04. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and

---



agreements by or on behalf of any Loan Party or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

SECTION 6.05. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and the LC Issuers and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by or on behalf of any Lender or any LC Issuer and notwithstanding that any Agent, any LC Issuer or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under any Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated.

SECTION 6.06. Counterparts; Effectiveness; Several Agreement. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission or electronic transmission (pdf) shall be as effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective as to any Loan Party when a counterpart hereof executed on behalf of such Loan Party shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Loan Party and the Collateral Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Loan Party, the Collateral Agent and the other Secured Parties and their respective successors and assigns, except that no Loan Party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the ABL Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

SECTION 6.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties hereto shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

---

SECTION 6.08. Right of Set-Off. If an Event of Default shall have occurred and be continuing, each Agent, each Lender, each LC Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Agent, such Lender, such LC Issuer or such Affiliate to or for the credit or the account of any Loan Party against any of and all the Obligations of such Loan Party now or hereafter existing under this Agreement owed to such Agent, such Lender or such LC Issuer, irrespective of whether or not such Agent, such Lender or such LC Issuer shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Agent, each Lender, each LC Issuer and its Affiliates under this Section 6.08 are in addition to other rights and remedies (including other rights of set-off) which such Person may have. For the avoidance of doubt, any payments obtained by any Lender pursuant to the exercise of rights under this Section 6.08 shall be subject to Section 2.14 of the Credit Agreement.

SECTION 6.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the Loan Parties hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that any Agent, any LC Issuer or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party, or its properties in the courts of any jurisdiction.

(c) Each of the Loan Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 6.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 6.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

---

SECTION 6.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.10.

SECTION 6.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 6.12. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest and all obligations of each Loan Party hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party in respect of the Obligations or this Agreement.

SECTION 6.13. Termination or Release. (a) This Agreement, the Guarantees made herein, the Security Interest and all other security interests granted hereby shall terminate when all the Obligations (other than, with respect to the termination of the Security Interest and all other security interests granted hereby only, any Obligations that consist solely of contingent obligations) have been indefeasibly paid in full, all Commitments under the Credit Agreement shall have been reduced to zero, no LC Issuer shall have any obligation to issue Letters of Credit under the Credit Agreement and no Letter of Credit shall be outstanding (other than any Letter of Credit the obligations under which have been cash collateralized in full or supported by letters of credit of other banks naming the applicable LC Issuer as the beneficiary, in each case, in

---

a manner satisfactory to the applicable LC Issuer). In connection with any termination pursuant to this paragraph, the Collateral Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all Uniform Commercial Code termination statements and any other documents that such Loan Party shall reasonably request to evidence such termination. Any execution and delivery of documents pursuant to this Section 6.13 shall be without recourse to, or representation of warranty by, the Collateral Agent or any other Secured Party.

(b) Except as provided in paragraph (a) above, the release of any Subsidiary Loan Party from its obligations hereunder and of the Security Interest in any ABL Collateral shall be governed by Section 9.08(a) of the Credit Agreement.

SECTION 6.14. Additional Subsidiaries. Pursuant to Section 6.13(c) of the Credit Agreement, certain Subsidiaries not originally parties hereto may be required from time to time to enter in this Agreement as Subsidiary Loan Parties. Upon execution and delivery by the Collateral Agent and a Subsidiary of an instrument in the form of Exhibit I hereto, such Subsidiary shall become a party to this Agreement as a Subsidiary Loan Party (and a guarantor and grantor hereunder) with the same force and effect as if originally named as a Subsidiary Loan Party herein. The execution and delivery of any such instrument shall not require the consent of any other Loan Party hereunder. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any new Loan Party as a party to this Agreement.

SECTION 6.15. Collateral Agent Appointed Attorney-in-Fact. Each Loan Party hereby appoints the Collateral Agent the attorney-in-fact of such Loan Party for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the Collateral Agent shall have the right, but only upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent's name or in the name of such Loan Party (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the ABL Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the ABL Collateral; (c) to sign the name of any Loan Party on any invoice or bill of lading relating to any of the ABL Collateral; (d) to send verifications of Accounts Receivable to any Account Debtor; (e) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the ABL Collateral or to enforce any rights in respect of any ABL Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the ABL Collateral; (g) to notify, or to require any Loan Party to notify, Account Debtors to make payment directly to the Collateral Agent; and (h) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the ABL Collateral for all purposes; *provided* that nothing herein

---

contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the ABL Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Loan Party for any act or failure to act hereunder, except for their own gross negligence, bad faith or wilful misconduct.

[The remainder of this page is blank.]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

SPECTRUM BRANDS, INC., as the Borrower

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Senior Vice President and Chief Financial Officer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

ROV HOLDING, INC.,

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Vice President and Treasurer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

ROVCAL, INC.,

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Vice President and Treasurer

[ABL Guarantee and Collateral Agreement]

---



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

UNITED INDUSTRIES CORPORATION,

By: /s/ Robert Prather

Name: Robert Prather

Title: Treasurer and Chief Financial Officer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

SPECTRUM NEPTUNE US HOLDCO CORPORATION,

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Vice President, Treasurer and Chief Financial Officer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

SCHULTZ COMPANY,

By: /s/ Robert Prather

Name: Robert Prather

Title: Treasurer and Chief Financial Officer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

UNITED PET GROUP, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

DB ONLINE, LLC,

By: United Pet Group, Inc., its Managing Member

By: /s/ Joe Gil

\_\_\_\_\_  
Name: Joe Gil

Title: Vice President Finance and Treasurer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

SOUTHERN CALIFORNIA FOAM, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

AQUARIA, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

---

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

AQUARIUM SYSTEMS, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[ABL Guarantee and Collateral Agreement]

---



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

PERFECTO MANUFACTURING, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

TETRA HOLDING (US), INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[ABL Guarantee and Collateral Agreement]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

WACHOVIA BANK, NATIONAL ASSOCIATION, as the Collateral Agent

By: /s/ Joseph L. White

Name: Joseph L. White

Title: Director

[ABL Guarantee and Collateral Agreement]

---

Schedule I  
Subsidiary Loan Parties

<b>Grantor</b>	<b>Type of Organization</b>	<b>Jurisdiction of Organization</b>	<b>Organization Identification Number</b>
ROV Holding, Inc.	Corporation	Delaware	0946128
ROVCAL, Inc.	Corporation	California	C2063405
United Industries Corporation	Corporation	Delaware	0790751
Spectrum Neptune US Holdco Corporation	Corporation	Delaware	3786826
Schultz Company	Corporation	Missouri	00069779
United Pet Group, Inc.	Corporation	Delaware	3066897
DB Online, LLC	Limited Liability Company	Hawaii	29170
Southern California Foam, Inc.	Corporation	California	C1456775
Aquaria, Inc.	Corporation	California	C0553017
Aquarium Systems, Inc.	Corporation	Delaware	2583486
Perfecto Manufacturing, Inc.	Corporation	Delaware	2626833
Tetra Holding (US), Inc.	Corporation	Delaware	3589555

---

SUPPLEMENT NO. \_\_ dated as of [ ], to the ABL Guarantee and Collateral Agreement dated as of September 28, 2007, among SPECTRUM BRANDS, INC., a Delaware corporation (the "**Borrower**"), each subsidiary of the Borrower listed on Schedule I thereto (collectively, the "**Subsidiary Loan Parties**"; the Subsidiary Loan Parties and the Borrower are referred to collectively herein as the "**Loan Parties**") and WACHOVIA BANK, NATIONAL ASSOCIATION ("**Wachovia**"), as the Collateral Agent.

A. Reference is made to the Credit Agreement dated as of September [ ], 2007 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among the Borrower, the other Loan Parties party thereto, the Lenders party thereto, Wachovia, as the Administrative Agent, the Collateral Agent and an LC Issuer, and Goldman Sachs Credit Partners L.P., as the Syndication Agent.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Guarantee and Collateral Agreement referred to therein.

C. The Loan Parties have entered into the Guarantee and Collateral Agreement in order to induce the Lenders to make Loans and the LC Issuers to issue Letters of Credit. Section 6.14 of the Guarantee and Collateral Agreement provides that additional Subsidiaries of the Borrower may become party to the Guarantee and Collateral Agreement as Subsidiary Loan Parties by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "**New Subsidiary**") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a party to the Guarantee and Collateral Agreement as a Subsidiary Loan Party in order to induce the Lenders to make additional Loans and the LC Issuers to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 6.14 of the Guarantee and Collateral Agreement, the New Subsidiary by its signature below becomes a party to the Guarantee and Collateral Agreement as a Subsidiary Loan Party and Loan Party thereunder (and accordingly, becomes a guarantor and a grantor thereunder), with the same force and effect as if originally named therein as a Subsidiary Loan Party, and the New Subsidiary hereby (a) agrees to all the terms and provisions of the Guarantee and Collateral Agreement applicable to it as a Subsidiary Loan Party and a guarantor and a grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Loan Party thereunder are true and correct on and as of the date hereof. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Obligations does hereby (i) create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest

---

in and lien on all of the New Subsidiary's right, title and interest in, to and under the ABL Collateral of the New Subsidiary, (b) guarantee the Obligations as set forth in Article II of the Guarantee and Collateral Agreement and (c) authorize the Collateral Agent at any time and from time to time to file in the applicable jurisdictions any initial financing statements with respect to the ABL Collateral or any part thereof and amendments thereto and continuations thereof that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment. Without limiting the foregoing, each Loan Party hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction financing statements that describe the ABL Collateral as "all assets, whether now owned or hereafter acquired" of such Loan Party, or words of similar effect as being of an equal or lesser scope or with greater detail. Each reference to a "Subsidiary Loan Party" or a "Loan Party" in the Guarantee and Collateral Agreement shall be deemed to include the New Subsidiary. The Guarantee and Collateral Agreement is hereby incorporated herein by reference.

SECTION 2. The New Subsidiary represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received a counterpart of this Supplement that bears the signature of the New Subsidiary and the Collateral Agent has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile transmission or electronic transmission (pdf) shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. The New Subsidiary hereby represents and warrants that set forth under its signature hereto, is the true and correct legal name of the New Subsidiary, its jurisdiction of formation, the organizational identification number, if any, issued to it by its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Guarantee and Collateral Agreement shall remain in full force and effect.

**SECTION 6. THIS SUPPLEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENT OR**

---

**ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS SUPPLEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY AGENT, ANY LENDER OR ANY LC ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SUPPLEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

SECTION 7. Any provision of this Supplement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof and of the Guarantee and Collateral Agreement and the Credit Agreement; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties hereto shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 6.01 of the Guarantee and Collateral Agreement.

SECTION 9. The New Subsidiary agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Collateral Agent.

---

IN WITNESS WHEREOF, the New Subsidiary and the Collateral Agent have duly executed this Supplement to the Guarantee and Collateral Agreement as of the day and year first above written.

[NAME OF NEW SUBSIDIARY],

by

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

Title:

Legal Name:

Jurisdiction of Formation:

Organizational ID Number:

Location of Chief Executive office:

WACHOVIA BANK, NATIONAL ASSOCIATION, as the  
Collateral Agent,

by

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

Title:



## INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (this “**Agreement**”) is dated as of September 28, 2007, and entered into by and among **SPECTRUM BRANDS, INC.**, a Wisconsin corporation (the “**Company**”); certain Subsidiaries of the Company party hereto (the “**Subsidiary Loan Parties**” and, together with the Company, the “**Loan Parties**”); **GOLDMAN SACHS CREDIT PARTNERS L.P.** (“**GSCP**”), in its capacity as collateral agent for the Term Secured Parties (as defined below), including its successors and assigns from time to time (the “**Term Collateral Agent**”); and **WACHOVIA BANK, NATIONAL ASSOCIATION** (“**Wachovia**”), in its capacity as collateral agent for the Revolving Secured Parties (as defined below), including its successors and assigns from time to time (the “**Revolving Collateral Agent**”). Capitalized terms used in this Agreement have the meanings assigned to them in Section 1 below.

### RECITALS

The Company, the lenders party thereto and GSCP, as Administrative Agent and Collateral Agent, have entered into a Credit Agreement dated as of March 30, 2007 (as amended, restated, supplemented, extended, waived, modified, replaced or refinanced from time to time, the “**Term Credit Agreement**”).

The Company, the Subsidiary Loan Parties, the lenders party thereto, Wachovia, as Administrative Agent, Collateral Agent and an LC Issuer, and GSCP, as Syndication Agent, have entered into a Credit Agreement dated as of the date hereof (as amended, restated, supplemented, extended, waived, modified, replaced or refinanced from time to time, the “**Revolving Credit Agreement**”).

Pursuant to the Term Credit Agreement, certain current and future Subsidiaries have guaranteed or will in the future guarantee the Term Obligations. Pursuant to the Revolving Credit Agreement, certain current and future Subsidiaries have guaranteed or will in the future guarantee the Revolving Obligations.

The Term Obligations are secured under the Term Collateral Documents by Liens on the ABL Collateral and the Non-ABL Collateral. The Revolving Obligations are being secured on the date hereof under the Revolving Collateral Documents by Liens on the ABL Collateral. The Term Secured Parties and the Revolving Secured Parties have authorized and directed the Term Collateral Agent and the Revolving Collateral Agent, respectively, to enter into this Agreement, pursuant to which (a) the Revolving Obligations will be secured on a first-priority basis by liens on the ABL Collateral and (b) the Term Obligations will be secured on a second priority basis by Liens on the ABL Collateral (as well as on a first-priority basis by Liens on the Non-ABL Collateral).

---

## AGREEMENT

In consideration of the foregoing and the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### **SECTION 1. Definitions.**

#### 1.1 Defined Terms.

Capitalized terms used and not defined in this Agreement have the meanings assigned to them in the Term Credit Agreement as initially executed by the parties thereto on March 30, 2007. As used in this Agreement, the following terms shall have the following meanings:

**“ABL Collateral”** means any and all of the following Collateral: (a) all Accounts (other than Accounts arising under contracts for the sale of Non-ABL Collateral) and related Records; (b) all Chattel Paper; (c) all Deposit Accounts and all cash, checks and other negotiable instruments, funds and other evidences of payment held therein (but not any identifiable Proceeds of Non-ABL Collateral); (d) all Inventory; (e) solely to the extent evidencing, governing, securing or otherwise related to the items referred to in the preceding clauses (a), (b), (c) and (d), all Documents, General Intangibles (other than Intellectual Property), Instruments, Investment Property and Letter of Credit Rights; (f) all books and records related to the foregoing; and (g) all Proceeds, including insurance Proceeds, of any and all of the foregoing and all collateral, security and guarantees given by any Person with respect to any of the foregoing. Notwithstanding clause (g) of the immediately preceding sentence, “ABL Collateral” shall not include any assets referred to in clauses (a) through (j) and (l) of the definition of “Non-ABL Collateral” that are not included in clause (e) above, and shall further not include any assets excluded from being collateral pursuant to the terms of the Revolving Collateral Documents. All capitalized terms used in this definition and not defined elsewhere in this Agreement have the meanings assigned to them in the UCC as in effect in the State of New York.

**“Affiliate”** means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, a Person shall be deemed to **“control”** or be **“controlled by”** a Person if such Person possesses, directly or indirectly, power to direct or cause the direction of the management or policies of such Person whether through ownership of equity interests, by contract or otherwise.

**“Agents”** means the Term Collateral Agent and the Revolving Collateral Agent.

**“Agreement”** means this Intercreditor Agreement, as amended, restated, replaced, renewed, extended, supplemented, waived or otherwise modified in writing from time to time.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Bankruptcy Law**” means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

“**Cash Collateral**” has the meaning assigned to that term in Section 6.1.

“**Collateral**” means all of the assets and property of any Grantor, whether real, personal or mixed, that are subject to Liens under the Collateral Documents or any of them.

“**Collateral Documents**” means the Revolving Collateral Documents and the Term Collateral Documents.

“**Company**” has the meaning assigned to that term in the Preamble to this Agreement.

“**Comparable Term Collateral Document**” means, in relation to any Collateral subject to any Lien created under any Revolving Collateral Document, the Term Document which creates a Lien on the same Collateral, granted by the same Grantor.

“**Credit Documents**” means this Agreement, the Revolving Documents and the Term Documents.

“**Currency Agreement**” means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement of the Company or any of its Subsidiaries.

“**DIP Financing**” has the meaning assigned to that term in Section 6.1.

“**Discharge of Revolving Obligations**” means, except to the extent otherwise expressly provided in Section 5.5:

(a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding) on all Revolving Obligations;

(b) payment in full in cash of all other Revolving Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid;

(c) termination or expiration of all commitments, if any, to extend credit that would constitute Revolving Obligations; and

(d) termination or cash collateralization of all letters of credit the reimbursement obligations in respect of which constitute Revolving Obligations.

**“Disposition”** has the meaning assigned to that term in Section 5.1(a)(2).

**“Governmental Authority”** means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a State of the United States, the United States, or a foreign entity or government.

**“Grantors”** means the Company, each of the Subsidiary Loan Parties and each other Person that has executed and delivered or may from time to time hereafter execute and deliver a Revolving Collateral Document or a Term Collateral Document as a “Grantor” (or the equivalent thereof).

**“Hedge Agreement”** means an Interest Rate Agreement or a Currency Agreement entered into with a Lender Party in order to satisfy the requirements of the Revolving Credit Agreement or the Term Credit Agreement.

**“Indebtedness”** means and includes all obligations that constitute “Indebtedness” within the meaning of the Revolving Credit Agreement or the Term Credit Agreement.

**“Insolvency or Liquidation Proceeding”** means:

- (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to any Grantor;
- (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its respective assets;
- (c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or
- (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Grantor;

provided that, in the case of any involuntary case or proceeding, such case or proceeding shall have continued for sixty days without having been dismissed, bonded or discharged.

**“Interest Rate Agreement”** means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement of the Company or any of its Subsidiaries.

**“Lender Party”** has the meaning assigned to such term in the Revolving Guarantee and Collateral Agreement or the Term Guarantee and Collateral Agreement.

**“Lien”** means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust, UCC financing statement or other preferential arrangement having the practical effect of any of the foregoing.

**“Loan Parties”** has the meaning assigned to that term in the preamble to this Agreement.

**“New Revolving Collateral Agent”** has the meaning assigned to that term in Section 5.5.

**“New Revolving Credit Debt Notice”** has the meaning assigned to that term in Section 5.5.

**“Non-ABL Collateral”** means any and all of the following Collateral: (a) all Investment Property; (b) all Documents; (c) all General Intangibles; (d) all Intellectual Property; (e) all Equipment; (f) all real property (including both fee and leasehold interests) and fixtures; (g) all Instruments; (h) all insurance; (i) all Letter of Credit Rights; (j) all Commercial Tort Claims; (k) all other Collateral not constituting ABL Collateral; (l) all books and records related to the foregoing; and (m) all Proceeds, including insurance Proceeds, of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing. Notwithstanding the foregoing, “Non-ABL Collateral” shall not include any property or assets included in clause (e) of the definition of “ABL Collateral”, or any property or assets excluded from being collateral pursuant to the terms of the Term Collateral Documents. All capitalized terms used in this definition and not defined elsewhere in this Agreement have the meanings assigned to them in the UCC as in effect in the State of New York.

**“Person”** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

**“Pledged Collateral”** has the meaning set forth in Section 5.4.

**“Recovery”** has the meaning set forth in Section 6.5.

**“Refinance”** means, in respect of any Indebtedness, to refinance, extend, renew, defease, amend, modify, supplement, restructure, replace, refund or repay, or to issue other indebtedness, in exchange or replacement for, such Indebtedness in whole or in part. **“Refinanced”** and **“Refinancing”** shall have correlative meanings.

**“Revolving Collateral Agent”** has the meaning assigned to such term in the preamble to this Agreement.

**“Revolving Collateral Documents”** means the Revolving Guarantee and Collateral Agreement and any other documents now existing or entered into after the date

hereof that create Liens on any ABL Collateral of the Company or any of its Subsidiaries to secure any Revolving Obligations.

**“Revolving Credit Agreement”** has the meaning assigned to such term in the Recitals to this Agreement.

**“Revolving Credit Cap Amount”** has the meaning assigned to such term in the definition of “Revolving Obligations”.

**“Revolving Credit Excess Amounts”** has the meaning assigned to such term in the definition of “Revolving Obligations.”

**“Revolving Documents”** means the Revolving Credit Agreement and the Revolving Collateral Documents.

**“Revolving Guarantee and Collateral Agreement”** means the ABL Guarantee and Collateral Agreement dated as of September 28, 2007, among the Company, the Subsidiary Loan Parties and the Revolving Collateral Agent, as amended, restated, replaced, renewed, extended, supplemented, waived or otherwise modified in writing from time to time.

**“Revolving Liens”** means Liens on the ABL Collateral created under the Revolving Collateral Documents and securing the Revolving Obligations and any Liens incurred in connection with any Refinancing of Revolving Obligations that are deemed to be “Revolving Liens” under Section 5.5.

**“Revolving Obligations”** means all “Obligations” under and as defined in the Revolving Collateral Documents and all Refinancings of such Obligations. “Revolving Obligations” shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of any Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Revolving Document, whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

Notwithstanding the foregoing or any other provision of this Agreement, if the sum of the Revolving Obligations consisting of (a) Indebtedness constituting principal of loans under the Revolving Credit Agreement and the other Revolving Documents plus (b) the aggregate face amount of all outstanding letters of credit issued under the Revolving Credit Agreement and the other Revolving Documents plus (c) all other obligations in the nature of principal obligations, including obligations under any Hedge Agreement, under the Revolving Credit Agreement and the other Revolving Documents, shall be in excess of the lesser of (i) \$300,000,000 and (ii) the Facilities Reduction Amount (as defined in the Term Credit Agreement as in effect on the date hereof) (the **“Revolving Credit Cap Amount”**), then that portion of such Indebtedness and face amount of letters of credit in excess of the Revolving Credit Cap Amount (the **“Revolving Credit Excess Amounts”**), and all interest and reimbursement obligations in respect of such Revolving Credit Excess Amounts, shall be secured by the Revolving Collateral Documents but shall not constitute “Revolving Obligations” under this Agreement, and the Liens created by the Revolving Collateral

Documents on the ABL Collateral, insofar as they secure such Revolving Credit Excess Amounts, shall be junior and subordinate in all respects to the Term Liens on such ABL Collateral.

**“Revolving Secured Parties”** means the “Secured Parties” as defined in the Revolving Guarantee and Collateral Agreement.

**“Secured Parties”** means the Revolving Secured Parties and the Term Secured Parties.

**“Standstill Period”** has the meaning set forth in Section 3.1.

**“Subsidiary”** means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof. Unless the context indicates otherwise, all references herein to a “Subsidiary” or “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company.

**“Subsidiary Loan Parties”** has the meaning assigned to such term in the preamble to this Agreement.

**“Term Collateral Agent”** has the meaning assigned to such term in the preamble to this Agreement.

**“Term Collateral Documents”** means the Term Guarantee and Collateral Agreement, each Term Mortgage and any other documents now existing or entered into after the date hereof that create Liens on any assets or properties of the Company or any of its Subsidiaries to secure any Term Obligations.

**“Term Credit Agreement”** has the meaning assigned to such term in the Recitals to this Agreement.

**“Term Documents”** means the Term Credit Agreement and the Term Collateral Documents.

**“Term Guarantee and Collateral Agreement”** means the Guarantee and Collateral Agreement dated as of March 30, 2007, among the Company, the Subsidiary Loan Parties and the Term Collateral Agent, as amended, restated, replaced, renewed, extended, supplemented, waived or otherwise modified in writing from time to time.

**“Term Liens”** means Liens on the Collateral created under the Term Collateral Documents and securing the Term Obligations and any judgment Liens referred to in Section 3.1(e).

**“Term Mortgage”** means each mortgage, deed of trust and other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Term Obligations or under which rights or remedies with respect to such Liens are governed.

**“Term Obligations”** means all “Obligations” under and as defined in the Term Collateral Documents and all Refinancings of such Obligations. “Term Obligations” shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of any Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Term Document, whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

**“Term Secured Parties”** means the “Secured Parties” as defined in the Term Guarantee and Collateral Agreement.

**“UCC”** means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

1.2 Terms Generally. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise:

- (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented, modified, renewed or extended;
- (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns;
- (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;
- (d) all references herein to Sections shall be construed to refer to Sections of this Agreement; and
- (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.



## **SECTION 2. Lien Priorities.**

2.1 Relative Priorities. Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Term Liens granted on the ABL Collateral or of any Revolving Liens granted on the ABL Collateral and notwithstanding any provision of the UCC or any other applicable law or the Term Documents or the Revolving Documents or any defect or deficiencies in, or failure to perfect, the Revolving Liens or any other circumstance whatsoever, the Term Collateral Agent, on behalf of itself and the Term Secured Parties, and the Revolving Collateral Agent, on behalf of itself and the Revolving Secured Parties, hereby agree that:

(a) any Revolving Lien on any ABL Collateral now or hereafter held by or on behalf of the Revolving Collateral Agent, any Revolving Secured Parties or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Term Lien on such ABL Collateral;

(b) any Term Lien on any ABL Collateral now or hereafter held by or on behalf of the Term Collateral Agent, any Term Secured Parties or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Revolving Liens on such ABL Collateral; and

(c) notwithstanding any other provision contained in this Agreement, any Liens on ABL Collateral created by the Revolving Documents, insofar as they secure Revolving Credit Excess Amounts, shall be junior and subordinate in all respects to the Term Liens on such ABL Collateral.

2.2 Prohibition on Contesting Liens. The Term Collateral Agent, for itself and on behalf of each Term Secured Party, agrees that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the perfection, priority, validity or enforceability of any applicable Revolving Lien on any ABL Collateral or the provisions of this Agreement.

## **SECTION 3. Enforcement.**

### 3.1 Exercise of Remedies.

(a) Until the Discharge of Revolving Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Term Collateral Agent and the Term Secured Parties:

(i) will not exercise or seek to exercise any rights or remedies with respect to any ABL Collateral subject to any Revolving Lien (including the exercise of any right of setoff or any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Term Collateral Agent or any Term Secured Party is a party) or institute any action or proceeding with respect to such rights or remedies

(including any action of foreclosure); provided, however, that the Term Collateral Agent or any Term Secured Party may exercise any or all such rights or remedies after a period of 180 days has elapsed since the first date on which the Term Collateral Agent shall have (A) declared the existence of any Event of Default under the Term Documents, (B) demanded the repayment of all the principal amount of the Term Obligations and (C) notified the Revolving Collateral Agent of such declaration of an Event of Default and demand (the “**Standstill Period**”); provided further, however, that notwithstanding anything herein to the contrary, in no event shall the Term Collateral Agent or any Term Secured Party exercise any rights or remedies with respect to any ABL Collateral subject to any Revolving Lien, notwithstanding the expiration of the Standstill Period, if the Revolving Collateral Agent or Revolving Secured Parties shall have commenced and be diligently pursuing the exercise of rights or remedies with respect to all or any material portion of such ABL Collateral (prompt notice of such exercise to be given to the Term Collateral Agent); provided further, however, that the parties hereto acknowledge and agree that this Section 3.1(a)(i) shall not in any way prohibit the Term Collateral Agent or any Term Secured Party from exercising any of its rights during an Insolvency or Liquidation Proceeding to the extent permitted by the other provisions hereof;

(ii) subject to Section 2.1(c), will not contest, protest or object to any foreclosure proceeding or action brought by the Revolving Collateral Agent or any Revolving Secured Party or any other exercise by the Revolving Collateral Agent or any Revolving Secured Party of any rights and remedies relating to any ABL Collateral, whether under the applicable Revolving Documents or otherwise; and

(iii) subject to clause (a)(i) above and except as may be permitted in Section 3.1(c), will not object to the forbearance by the Revolving Collateral Agent or any Revolving Secured Party from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to any ABL Collateral subject to any Revolving Lien;

provided that, in the case of clauses (i), (ii) and (iii) above, the Liens granted on the ABL Collateral to secure the Term Obligations shall attach to any Proceeds resulting from actions taken by the Revolving Collateral Agent or any Revolving Secured Party in accordance with this Agreement after application of such Proceeds to the extent necessary to meet the requirements of a Discharge of Revolving Obligations.

(b) Subject to the terms and conditions of this Agreement, until the Discharge of Revolving Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, subject to Section 3.1(a)(i), the Revolving Collateral Agent and the Revolving Secured Parties shall have the exclusive right to enforce rights, exercise remedies (including the exercise of any right of set-off, any right under any lockbox agreement, account control agreement, landlord waiver or bailee’s letter or similar agreement or arrangement and the right to credit bid their debt) and, in the course of such exercise,

make related determinations regarding the release, disposition or restrictions with respect to any ABL Collateral subject to Revolving Liens without any consultation with or the consent of the Term Collateral Agent or any Term Secured Party; provided that the Liens on any ABL Collateral securing any Term Obligations shall remain on the Proceeds of such Collateral so released or disposed of, subject to the relative priorities described in Section 2. In exercising rights and remedies with respect to the ABL Collateral subject to the Revolving Liens, the Revolving Collateral Agent and each Revolving Secured Party may enforce the provisions of the applicable Revolving Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in their sole discretion. Such exercise and enforcement shall include the right of any agent appointed by them to sell or otherwise dispose of such ABL Collateral upon foreclosure, to incur expenses in connection with such sale or disposition and to exercise all the rights and remedies of a secured creditor under the UCC and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(c) Notwithstanding the foregoing, the Term Collateral Agent and any Term Secured Party may:

(i) file a claim or statement of interest with respect to the applicable Term Obligations; provided that an Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor;

(ii) take any action (not adverse to the priority status of any Revolving Liens on the ABL Collateral or the rights of the Revolving Collateral Agent or any Revolving Secured Party to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its Term Liens on the ABL Collateral;

(iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Term Secured Parties, including any claims secured by the ABL Collateral, in each case in accordance with the terms of this Agreement;

(iv) file any pleadings, objections, motions or agreements to assert rights or interests that are available to unsecured creditors of the Grantors arising under any Insolvency or Liquidation Proceeding or any applicable law and that, in each case, are not inconsistent with the terms of this Agreement;

(v) vote on any plan of reorganization, file any proof of claim, make other filings and make any arguments and motions that are, in each case, in accordance with the terms of this Agreement, with respect to the Term Obligations and the Collateral; and

(vi) exercise any of its rights or remedies with respect to the ABL Collateral after the termination of the Standstill Period to the extent permitted by Section 3.1(a)(i).

The Term Collateral Agent, on behalf of itself and the Term Secured Parties, agrees that it will not take or receive any ABL Collateral subject to any Revolving Lien or any Proceeds of any such ABL Collateral in connection with the exercise of any right or remedy (including set-off) with respect to such ABL Collateral in its capacity as a creditor in violation of this Agreement. Without limiting the generality of the foregoing, unless and until the Discharge of Revolving Obligations has occurred, except as expressly provided in Sections 3.1(a), Section 6.3(b) and this Section 3.1(c), the sole right of the Term Collateral Agent and the Term Secured Parties with respect to any ABL Collateral subject to any Revolving Lien is to hold a Lien on such ABL Collateral pursuant to the applicable Term Collateral Documents for the period and to the extent granted therein and to receive a share of the Proceeds thereof, if any, after the Discharge of Revolving Obligations has occurred.

(d) Subject to Sections 3.1(a), 3.1(c) and 6.3(b):

(i) the Term Collateral Agent, for itself and on behalf of the Term Secured Parties, agrees that it and the Term Secured Parties will not take any action that would hinder or delay any exercise of remedies with respect to the ABL Collateral under the applicable Revolving Documents or the realization of the full value of any ABL Collateral in which the Revolving Collateral Agent has Liens or would otherwise be prohibited hereunder, including any sale, lease, exchange, transfer or other disposition of any ABL Collateral subject to any Revolving Lien, whether by foreclosure or otherwise;

(ii) the Term Collateral Agent, for itself and on behalf of the Term Secured Parties, hereby waives any and all rights it or the Term Secured Parties may have as junior lien creditors or otherwise to object to the manner in which the Revolving Collateral Agent or any Revolving Secured Party seeks to enforce or realize on the Revolving Liens on the ABL Collateral in accordance with this Agreement, regardless of whether any action or failure to act by or on behalf of the Revolving Collateral Agent or such Revolving Secured Party is adverse to the interests of the Term Secured Parties; and

(iii) the Term Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Term Collateral Documents or any other Term Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Revolving Collateral Agent or any Revolving Secured Party with respect to the ABL Collateral subject to their Revolving Liens as set forth in this Agreement and the Revolving Documents.

(e) Except as otherwise specifically set forth in Sections 3.1(a) and 3.1(d), the Term Collateral Agent and the Term Secured Parties may exercise rights and remedies as unsecured creditors against the Company or any other Person that has guaranteed or granted Liens to secure the Term Obligations in accordance with the terms of the Term Documents and applicable law; provided that in the event that any Term Secured Party becomes a judgment Lien creditor in respect of any ABL Collateral subject to any Revolving Lien as a result of its enforcement of its rights as an unsecured creditor with respect to the applicable Term Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes of this Agreement.

(f) Nothing in this Agreement shall prohibit the receipt by the Term Collateral Agent or any Term Secured Party of the required or permitted payments of interest, principal and other amounts owed in respect of the applicable Term Obligations so long as such receipt is not the direct or indirect result of the exercise by the Term Collateral Agent or any Term Secured Party of rights or remedies against the ABL Collateral as a secured creditor (including set-off) or enforcement in contravention of this Agreement of any Term Lien on ABL Collateral held by any of them. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the Revolving Collateral Agent or any Revolving Secured Party may have with respect to any ABL Collateral subject to its Revolving Liens.

#### **SECTION 4. Payments.**

4.1 Application of Proceeds. So long as the Discharge of Revolving Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, ABL Collateral or Proceeds thereof received in connection with the sale or other disposition of, or collection on, such ABL Collateral upon the exercise of remedies by the Revolving Collateral Agent or any Revolving Secured Parties shall be applied by the Revolving Collateral Agent to the applicable Revolving Obligations. Upon the Discharge of Revolving Obligations, the Revolving Collateral Agent shall deliver to the Term Collateral Agent any ABL Collateral and Proceeds thereof held by the Revolving Collateral Agent in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct, to be applied by the Term Collateral Agent to the Term Obligations.

4.2 Payments Over in Violation of Agreement. So long as the Discharge of Revolving Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, if the Term Collateral Agent or any Term Secured Party receives any ABL Collateral subject to any Revolving Lien or any Proceeds thereof in connection with (i) the exercise of any right or remedy (including set-off) relating to such ABL Collateral in contravention of this Agreement or (ii) the transfer of such ABL Collateral or Proceeds to the Term Collateral Agent or the Term Secured Party (pursuant to this paragraph or otherwise) by any Person holding a Lien on such ABL Collateral that is subordinate to the Lien of the Term Collateral Agent or the Term Secured Party, such ABL Collateral or Proceeds shall be segregated and held in trust and forthwith paid over to the Revolving Collateral Agent for the benefit of the applicable Revolving Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Revolving Collateral Agent is hereby authorized to make any such endorsements as agent for the Term Collateral Agent or the Term Secured Parties (such authorization being coupled with an interest and irrevocable until the Discharge of Revolving Obligations).

## **SECTION 5. Other Agreements.**

5.1 Releases. (a) If in connection with the exercise of the Revolving Collateral Agent's remedies in respect of any ABL Collateral subject to its Revolving Liens as provided for in Section 3.1, the Revolving Collateral Agent, for itself or on behalf of any of the Revolving Secured Parties, releases any of its Liens on any part of such ABL Collateral, then the Term Liens of the Term Collateral Agent, for itself or for the benefit of the Term Secured Parties, on such ABL Collateral shall be automatically, unconditionally and simultaneously released. The Term Collateral Agent, for itself and on behalf of the Term Secured Parties, promptly shall execute and deliver to the Revolving Collateral Agent such termination statements, releases and other documents as the Revolving Collateral Agent may request to effectively confirm such release.

(b) If in connection with any sale, lease, exchange, transfer or other disposition of any ABL Collateral (collectively, a "**Disposition**") permitted under the terms of both the Revolving Documents and the Term Documents (other than in connection with the exercise of the Revolving Collateral Agent's remedies in respect of any ABL Collateral as provided for in Section 3.1) the Revolving Collateral Agent, for itself or on behalf of any of the Revolving Secured Parties, releases any of its Revolving Liens on any part of ABL Collateral other than (A) in connection with the Discharge of Revolving Obligations or (B) after the occurrence and during the continuance of any Event of Default under and as defined in the Term Documents, then the Term Liens of the Term Collateral Agent on such Collateral shall be automatically, unconditionally and simultaneously released. The Term Collateral Agent, for itself and on behalf of the Term Secured Parties, promptly shall execute and deliver to the Revolving Collateral Agent such termination statements, releases and other documents as the Revolving Collateral Agent may request to effectively confirm such release.

(c) Until the Discharge of Revolving Obligations occurs, the Term Collateral Agent, for itself and on behalf of the Term Secured Parties, hereby irrevocably constitutes and appoints the Revolving Collateral Agent and any officer or agent of the Revolving Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Term Collateral Agent or the Term Secured Parties or in the Revolving Collateral Agent's own name, from time to time in the Revolving Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all action and to execute any and all documents and instruments which may be necessary or appropriate to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release.

(d) Until the Discharge of Revolving Obligations occurs, to the extent that the Revolving Collateral Agent or the Revolving Secured Parties (i) have released any Revolving Lien on any ABL Collateral and such Lien is later reinstated or (ii) obtain any new Liens from any Grantor, then the Term Collateral Agent, for itself and for the Term Secured Parties, shall be granted a Lien on any such Collateral, subject, if such Collateral is ABL Collateral, to the Lien subordination provisions of this Agreement.

5.2 Insurance. Unless and until the Discharge of Revolving Obligations has occurred, subject to the terms of, and the rights of the Grantors under, the applicable Revolving Documents, the Revolving Collateral Agent and Revolving Secured Parties shall have the right, in consultation with and subject to the consent of the Company (unless an Event of Default shall have occurred and be continuing and except as otherwise provided in the Revolving Documents), to adjust settlement for any insurance policy covering any ABL Collateral subject to the Revolving Liens in the event of any loss thereunder and, in consultation with and subject to the consent of the Company (unless an Event of Default shall have occurred and be continuing and except as otherwise provided in the Revolving Documents), to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting such ABL Collateral. Unless and until the Discharge of Revolving Obligations has occurred, and subject to the rights of the Grantors under the Revolving Documents, all Proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if with respect to such ABL Collateral shall be paid to the Revolving Collateral Agent for the benefit of the Revolving Secured Parties to the extent required under the Revolving Documents (including for purposes of cash collateralization of letters of credit) and thereafter, to the extent no Revolving Obligations are outstanding, and subject to the rights of the Grantors under the Term Documents, to the Term Collateral Agent for the benefit of the Term Secured Parties to the extent required under the Term Documents and then, to the extent no Term Obligations are outstanding, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. Until the Discharge of Revolving Obligations has occurred, if the Term Collateral Agent or any Term Secured Party shall, at any time, receive any Proceeds of any such insurance policy or any such award or payment, in each case with respect to such ABL Collateral, in contravention of this Agreement, it shall segregate and hold in trust and forthwith pay such Proceeds over to the Revolving Collateral Agent in accordance with the terms of Section 4.2.

5.3 Amendments to Revolving Documents and Term Documents. (a) Each of the Revolving Documents and the Term Documents may be amended, supplemented or otherwise modified in accordance with the terms thereof, and all Indebtedness under the Revolving Credit Agreement and the Term Credit Agreement may be Refinanced in accordance with the terms thereof, except, in each case, as prohibited under the Revolving Credit Agreement or the Term Credit Agreement, each as in effect on the date hereof and as amended from time to time (but without giving effect to any amendment, supplement or modification that prohibits or restricts the amendment or modification of the Revolving Credit Agreement or the Term Credit Agreement or the Refinancing of any Indebtedness under either such agreement to a greater extent than the provisions in effect on the date hereof). The Revolving Collateral Agent, on behalf of the Revolving Secured Parties, and the Company agree that the Revolving Documents will not restrict the amendment, supplement or modification of the Term Documents to a greater extent than the Term Credit Agreement, as in effect on the date hereof, restricts the amendment, supplement or modification of the Revolving Documents. In the event any Indebtedness under the Revolving Credit Agreement or the Term Credit Agreement is Refinanced, the holders of such Refinancing debt shall bind themselves in a writing addressed to the Term Collateral Agent or the Revolving Collateral Agent, as the case may be, for the benefit of the Term

Secured Parties or the Revolving Secured Parties, as applicable, to the terms of this Agreement. No amendment, supplement or other modification of any Revolving Document or any Term Document shall affect the Lien subordination or other provisions of this Agreement.

(b) In the event the Revolving Collateral Agent or Revolving Secured Parties and any Grantor enter into any amendment, waiver or consent in respect of any Revolving Collateral Document for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any such Revolving Collateral Document or changing in any manner the rights of the Revolving Collateral Agent, such Revolving Secured Parties, the Company or any other Grantor thereunder, then such amendment, waiver or consent, solely insofar as it relates to ABL Collateral and the rights of the Revolving Collateral Agent with respect thereto, shall apply automatically to any comparable provision of each Comparable Term Collateral Document without the consent of the Term Collateral Agent or the Term Secured Parties and without any action by the Term Collateral Agent, the Company or any other Grantor, provided that:

(i) no such amendment, waiver or consent shall have the effect of:

(A) removing or releasing assets subject to the Lien of the Term Collateral Document, except to the extent that a release of such Lien is permitted or required by Section 5.1 or consented to by the Term Collateral Agent or the Term Secured Parties and provided that there is a corresponding release of the Liens securing the applicable Revolving Obligations;

(B) imposing duties on the Term Collateral Agent without its consent;

(C) permitting other Liens on the Collateral not permitted under the terms of the Term Documents or Section 6; or

(D) being prejudicial to the interests of the Term Secured Parties to a greater extent than the Revolving Secured Parties; and

(ii) notice of such amendment, waiver or consent shall have been given to the Term Collateral Agent within ten (10) Business Days after the effective date of such amendment, waiver or consent.

5.4 Bailee for Perfection. (a) The Revolving Collateral Agent agrees to hold that part of the ABL Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC (such ABL Collateral being the “**Pledged Collateral**”), as collateral agent for the Revolving Secured Parties and as bailee for the Term Collateral Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC), solely for the purpose of



perfecting the security interest granted under the applicable Revolving Documents and Term Documents, respectively, subject to the terms and conditions of this Section 5.4.

(b) The Revolving Collateral Agent shall have no obligation whatsoever to the Term Collateral Agent or any Term Secured Party to ensure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.4. The duties or responsibilities of the Revolving Collateral Agent under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee in accordance with this Section 5.4 and delivering the Pledged Collateral upon the applicable Discharge of Revolving Obligations as provided in paragraph (d) below.

(c) The Revolving Collateral Agent acting pursuant to this Section 5.4 shall not have by reason of the Revolving Collateral Documents, the Term Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of the Term Collateral Agent or any Term Secured Party or any liability to the Term Collateral Agent or any Term Secured Party absent gross negligence or willful misconduct on the part of the Revolving Collateral Agent.

(d) Upon the Discharge of Revolving Obligations, the Revolving Collateral Agent shall deliver the remaining Pledged Collateral held or controlled by it (if any), together with any necessary endorsements, first, to the Term Collateral Agent to the extent Term Obligations remain outstanding, and second, to the Company to the extent no Revolving Obligations or Term Obligations remain outstanding (in each case, so as to allow such Person to obtain possession or control of such Pledged Collateral). The Revolving Collateral Agent further agrees, upon the Discharge of Revolving Obligations, to take all other action reasonably requested by any Term Collateral Agent in connection with the Term Collateral Agent obtaining a first-priority interest in such Pledged Collateral or as a court of competent jurisdiction may otherwise direct.

(e) Subject to the terms of this Agreement, so long as the Discharge of Revolving Obligations has not occurred, the Revolving Collateral Agent shall be entitled to deal with the Pledged Collateral or ABL Collateral within its “control” in accordance with the terms of this Agreement and the Revolving Documents.

5.5 When Discharge of Revolving Obligations Deemed Not to Have Occurred. If the Company enters into any Refinancing of any Revolving Document evidencing Revolving Obligations which Refinancing is permitted by the Term Documents, then a Discharge of Revolving Obligations shall be deemed not to have occurred for all purposes of this Agreement and, from and after the date on which the New Revolving Credit Debt Notice is delivered to the Term Collateral Agent in accordance with the next sentence, the obligations under such Refinancing of the Revolving Document shall automatically be treated as Revolving Obligations, and the Liens securing such Revolving Obligations shall be treated as Revolving Liens, for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of ABL Collateral set forth herein, and the Revolving Collateral Agent under such Revolving Documents shall be the Revolving Collateral Agent for all purposes of this Agreement. Upon receipt of a notice (the “**New**

**Revolving Credit Debt Notice**”) stating that the Company has entered into a new Revolving Document (which notice shall include the identity of the new Revolving Collateral Agent, such agent, the **“New Revolving Collateral Agent”**), the Revolving Collateral Agent and the Term Collateral Agent shall promptly (a) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such New Revolving Collateral Agent shall reasonably request in order to provide to the New Revolving Collateral Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement, and (b) deliver to the New Revolving Collateral Agent any Pledged Collateral held by it together with any necessary endorsements (or otherwise allow the New Revolving Collateral Agent to obtain control of such Pledged Collateral). The New Revolving Collateral Agent shall agree in a writing addressed to the Term Collateral Agent for the benefit of the Term Secured Parties to be bound by the terms of this Agreement. If the new Revolving Obligations under the new Revolving Documents are secured by assets of the Grantors that do not also secure any Term Obligations, then such Term Obligations shall be secured at such time by a Lien on such assets to the same extent provided in the applicable Term Collateral Documents and this Agreement.

5.6 Purchase Right. Without prejudice to the enforcement of the Revolving Secured Parties’ remedies, the Revolving Collateral Agent, on behalf of the Revolving Secured Parties, agrees that at any time following an acceleration of any Revolving Obligations in accordance with the terms of the Revolving Documents, the Revolving Secured Parties will offer the Term Secured Parties in writing (with a copy of such notice to the Company simultaneously therewith) the option to purchase for cash the entire aggregate amount of such accelerated Revolving Obligations (including unfunded commitments under the applicable Revolving Documents, if any) at par plus accrued interest, fees and expenses (without regard to any prepayment penalty or premium), without warranty or representation or recourse, on a pro rata basis from the Revolving Secured Parties. The Term Secured Parties shall irrevocably accept or reject such offer within ten (10) Business Days of the receipt thereof and the parties shall endeavor to close promptly thereafter using the applicable assignment forms set forth in the Revolving Documents. If the Term Secured Parties accept such offer, it shall be exercised pursuant to documentation mutually acceptable to the Revolving Collateral Agent and the Term Collateral Agent. If the Term Secured Parties reject such offer (or do not so irrevocably accept such offer within the required period), the Revolving Secured Parties shall have no further obligations under this Section 5.6.

5.7 Rights of Access and Use. (a) In the event that the Term Collateral Agent shall acquire control or possession of any of the Non-ABL Collateral or shall, through the exercise of remedies under the Term Collateral Documents or otherwise, sell any of the Non-ABL Collateral to any third party (a **“Third Party Purchaser”**), the Term Collateral Agent shall permit the Revolving Collateral Agent (or require as a condition of such sale to the Third Party Purchaser that the Third Party Purchaser agree to permit the Revolving Collateral Agent), at its option and in accordance with applicable law, and at the expense of the Revolving Secured Parties: (i) to enter any or all of the Non-ABL Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of real property during normal business hours or in order to inspect, remove or take any action with respect

to the ABL Collateral or to enforce the Revolving Collateral Agent's rights with respect thereto, including, but not limited to, the examination and removal of ABL Collateral and the examination and duplication of the books and records of any Grantor related to the ABL Collateral, or to otherwise handle, deliver, ship, transport, deal with or dispose of any ABL Collateral, such right to include, without limiting the generality of the foregoing, the right to conduct one or more public or private sales or auctions thereon; and (ii) use any of the Non-ABL Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of equipment (including computers or other data processing equipment related to the storage or processing of records, documents or files pertaining to the ABL Collateral) to handle, deal with or dispose of any ABL Collateral pursuant to the rights of the Revolving Collateral Agent and Revolving Secured Parties as set forth in the Revolving Documents, the UCC of any applicable jurisdiction and other applicable law. The Term Collateral Agent shall not have any responsibility or liability for the acts or omissions of the Revolving Collateral Agent or any Revolving Secured Parties, and the Revolving Collateral Agent and the Revolving Secured Parties shall not have any responsibility or liability for the acts or omissions of the Term Collateral Agent, in each case arising in connection with such other Person's use and/or occupancy of any of the Non-ABL Collateral. The rights of the Revolving Collateral Agent set forth in clauses (i) and (ii) above as to the Non-ABL Collateral shall be irrevocable and shall continue at the Revolving Collateral Agent's option for a period of one hundred and eighty (180) days from the date on which the Term Collateral Agent has notified the Revolving Collateral Agent that the Term Collateral Agent has acquired possession or control of any of the Non-ABL Collateral.

(b) During the period of actual occupation, use and/or control by the Revolving Collateral Agent of any Non-ABL Collateral (or any assets or property subject to a leasehold interest constituting Non-ABL Collateral), the Revolving Secured Parties shall be obligated (i) to reimburse the Term Secured Parties for their pro rata share of all utilities, taxes, insurance and all other operating costs of such Non-ABL Collateral used by them during any such period of actual occupation, use and/or control to the extent the same are actually paid by the Term Secured Parties, (ii) to repair at their expense any physical damage to such Non-ABL Collateral resulting from such occupancy, use or control, and to leave such Non-ABL Collateral in substantially the same condition as it was at the commencement of such occupancy, use or control, (iii) to deliver to the Term Collateral Agent a certificate of insurance showing property and liability coverage reasonably satisfactory to the Term Collateral Agent on such Non-ABL Collateral during any such period of actual occupation, use and/or control thereof by the Revolving Collateral Agent and naming the Term Collateral Agent as an additional named insured and (iv) to indemnify and hold harmless the Term Secured Parties from and against any third party claims against the Term Secured Parties resulting from actions or omissions by the Revolving Secured Parties or their agents or representatives during the period of such occupancy, use or control by the Revolving Collateral Agent. Without limiting the rights granted in this paragraph, the Revolving Collateral Agent and the Revolving Secured Parties shall cooperate with the Term Secured Parties in connection with any efforts made by the Term Collateral Agent or the Term Secured Parties to sell the Non-ABL Collateral.

(c) In addition to and not in limitation of Section 5.7(a), in connection with any enforcement action by the Revolving Collateral Agent, the Term Collateral Agent hereby grants to the Revolving Collateral Agent a non-exclusive, irrevocable royalty free license with respect to any intellectual property necessary to realize upon any ABL Collateral for the purpose of effecting such realization.

## **SECTION 6. Insolvency or Liquidation Proceedings.**

6.1 Finance and Sale Issues. Until the Discharge of Revolving Obligations has occurred, if the Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the Revolving Collateral Agent shall desire to permit the use of "Cash Collateral" (as such term is defined in Section 363(a) of the Bankruptcy Code) which constitutes ABL Collateral or to permit the Company or any other Grantor to obtain financing from the Revolving Secured Parties under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law ("**DIP Financing**"), then the Term Collateral Agent, on behalf of itself and the Term Secured Parties, agrees that it will raise no objection to such Cash Collateral use or DIP Financing, insofar as its rights with respect to the ABL Collateral are affected, so long as (i) such Cash Collateral use or DIP Financing is on commercially reasonable terms and, if required by applicable law, is approved by the Governmental Authority having jurisdiction over such Insolvency or Liquidation Proceeding, (ii) the Term Collateral Agent and the Term Secured Parties retain the right to object to any ancillary agreements or arrangements regarding such Cash Collateral use or DIP Financing that are materially prejudicial to their interests and (iii) such DIP Financing does not compel the Company to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the DIP Financing documentation or a related document and the DIP Financing documentation or Cash Collateral order does not expressly require the liquidation of Collateral prior to a default under the DIP Financing documentation or Cash Collateral order. To the extent the Revolving Liens are subordinated to or pari passu with such DIP Financing which meets the requirements of clauses (i) through (iii) above, the Term Collateral Agent will subordinate its Term Liens in the ABL Collateral to the Liens securing such DIP Financing (and all obligations relating thereto) and will not request adequate protection or any other relief in connection with its rights as a holder of Liens on the ABL Collateral (except as expressly agreed by the Revolving Collateral Agent or to the extent permitted by Section 6.3).

6.2 Relief from the Automatic Stay. Until the Discharge of Revolving Obligations has occurred, the Term Collateral Agent, on behalf of itself and the Term Secured Parties, agrees that none of them shall seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the ABL Collateral in which it holds Revolving Liens, without the prior written consent of the Revolving Collateral Agent, unless a motion for adequate protection permitted under Section 6.3 has been denied by the Bankruptcy Court. The Term Collateral Agent, on behalf of itself and the Term Secured Parties, agrees that none of them shall oppose (or support any other Person opposing) any motion the Revolving Collateral Agent seeking relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the ABL Collateral in which it holds Revolving Liens.

6.3 Adequate Protection.

(a) The Term Collateral Agent, on behalf of itself and the Term Secured Parties, agrees that none of them shall contest (or support any other Person contesting):

(i) any request by the Revolving Collateral Agent or Revolving Secured Parties for adequate protection with respect to Revolving Liens in ABL Collateral; or

(ii) any objection by the Revolving Collateral Agent or Revolving Secured Parties to any motion, relief, action or proceeding based on the Revolving Collateral Agent or Revolving Secured Parties claiming a lack of adequate protection with respect to Revolving Liens in ABL Collateral.

(b) Notwithstanding Section 6.3(a), in any Insolvency or Liquidation Proceeding:

(i) if the Revolving Secured Parties (or any subset thereof) are granted adequate protection in the form of additional collateral in connection with any Cash Collateral use or DIP Financing and such additional collateral is the type of asset or property that would constitute ABL Collateral, then (A) the Term Collateral Agent, on behalf of itself or any of the Term Secured Parties, may seek or request adequate protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the Revolving Obligations and such Cash Collateral use or DIP Financing (and all obligations relating thereto) on the same basis as the other Liens on ABL Collateral securing the Term Obligations are so subordinated to the Liens on ABL Collateral securing the Revolving Obligations under this Agreement and (B) subject to clause (ii) below, the Revolving Collateral Agent, on behalf of itself and the Revolving Secured Parties, agrees that none of them shall contest (or support any other Person contesting) (1) any request by the Term Collateral Agent or any Term Secured Party for adequate protection pursuant to the preceding clause (A) or (2) any objection to any motion, relief, action or proceeding in support of a request for adequate protection pursuant to the preceding clause (A); and

(ii) in the event the Term Collateral Agent, on behalf of itself or any Term Secured Parties, seeks or requests adequate protection in respect of Term Obligations and such adequate protection is granted in the form of additional collateral of a type of asset or property that would constitute ABL Collateral, then the Term Collateral Agent, on behalf of itself and the Term Secured Parties, agrees that the Revolving Collateral Agent shall also be granted a Lien on such additional collateral as security for the Revolving Obligations and for any Cash Collateral use or DIP Financing provided by the Revolving Secured Parties and that any Lien on such additional collateral securing the applicable Term Obligations shall be

subordinated to the Lien on such collateral securing the Revolving Obligations and any such DIP Financing provided by the Revolving Secured Parties (and all obligations relating thereto) and to any other Liens granted to the Revolving Secured Parties as adequate protection on the same basis as the other Liens on ABL Collateral securing the Term Obligations are so subordinated to the Liens on ABL Collateral securing the Revolving Obligations under this Agreement. Except in connection with the exercise of remedies with respect to the ABL Collateral, nothing herein shall limit the rights of the Term Collateral Agent or any Term Secured Parties from seeking adequate protection with respect to their rights in the Collateral in any Insolvency or Liquidation Proceeding (including adequate protection in the form of a cash payment, periodic cash payments or otherwise).

6.4 No Waiver. Subject to Sections 3.1(a) 3.1(d) and 6.3(b), nothing contained herein shall prohibit or in any way limit the Revolving Collateral Agent or any Revolving Secured Party from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by the Term Collateral Agent or any Term Secured Parties in respect of the ABL Collateral, including the seeking by the Term Collateral Agent or any Term Secured Parties of adequate protection or the asserting by the Term Collateral Agent or any Term Secured Parties of any rights and remedies under the applicable Term Documents or otherwise, in each case to the extent affecting (i) the Revolving Collateral Agent's or such Revolving Secured Parties' rights in ABL Collateral or (ii) the amount of Indebtedness that is secured by a Lien on ABL Collateral that is senior to that of the Revolving Collateral Agent or such Revolving Secured Parties. Except as otherwise contemplated by the other provisions of this Agreement, nothing contained in this Agreement shall prohibit or in any way limit the Term Collateral Agent or any Term Secured Party from objecting in an Insolvency or Liquidation Proceeding or objecting to any action taken by the Revolving Collateral Agent or any Revolving Secured Party.

6.5 Avoidance Issues. If any Revolving Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Grantor any amount paid in respect of Revolving Obligations (a "**Recovery**"), then such Revolving Secured Party shall be entitled to a reinstatement of the applicable Revolving Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement.

6.6 Post-Petition Interest. (a) Neither the Term Collateral Agent nor any Term Secured Party shall oppose or seek to challenge any claim by the Revolving Collateral Agent or any Revolving Secured Party for allowance in any Insolvency or Liquidation Proceeding of Revolving Obligations consisting of post-petition interest, fees or expenses to the extent of the value of any applicable Revolving Secured Party's Lien on the ABL Collateral, without regard to the existence of the Term Lien of the Term Collateral Agent on behalf of the Term Secured Parties on the ABL Collateral.

(b) Neither the Revolving Collateral Agent nor any Revolving Secured Party shall oppose or seek to challenge any claim by the Term Collateral Agent or any Term Secured Party for allowance in any Insolvency or Liquidation Proceeding of Term Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Lien of the Term Collateral Agent on behalf of the Term Secured Parties on the Collateral (after taking into account any Lien of the Revolving Collateral Agent on behalf of the Revolving Secured Parties in any ABL Collateral).

6.7 Waiver. Except as otherwise contemplated by the other provisions of this Agreement, the Term Collateral Agent, for itself and on behalf of the Term Secured Parties, waives any claim it may hereafter have against any Revolving Secured Party arising out of the election by any Revolving Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the ABL Collateral in any Insolvency or Liquidation Proceeding.

6.8 Separate Grants of Security and Separate Classification. Each of the Revolving Collateral Agent, for itself and on behalf of the Revolving Secured Parties, and the Term Collateral Agent, for itself and on behalf of the Term Secured Parties, acknowledges and agrees that (a) the grants of Liens pursuant to the Revolving Collateral Documents and the Term Collateral Documents constitute separate and distinct grants of Liens; and (b) because of, among other things, their differing rights in the ABL Collateral, the Revolving Obligations and the Term Obligations are fundamentally different from one another and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding (other than any such plan of reorganization that provides for the payment in full and in cash of the aggregate amount of (and accrued interest, fees and expenses under) the Revolving Obligations and Term Obligations). To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the Revolving Secured Parties and the Term Secured Parties or any of them in respect of any ABL Collateral constitute only one secured claim (rather than separate classes of secured claims), then each of the parties hereto hereby acknowledges and agrees that, subject to Sections 2.1 and 4.1, all distributions shall be made as if there were separate classes of secured claims against the Grantors in respect of such ABL Collateral (with the effect being that, to the extent that the aggregate value of such ABL Collateral is sufficient (for this purpose ignoring all claims held by the Term Secured Parties), the Revolving Secured Parties shall be entitled to receive, in addition to amounts otherwise distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, including any additional interest payable pursuant to the applicable Revolving Documents arising from or related to a default, which is disallowed as a claim in any Insolvency or Liquidation Proceeding before any distribution in respect of ABL Collateral is made in respect of the claims held by the Term Secured Parties, with the Term Collateral Agent, for itself and on behalf of the Term Secured Parties, hereby acknowledging and agreeing to turn over to the Revolving Collateral Agent, for itself and on behalf of the Revolving Secured Parties, amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence (with respect to the payment of post-petition interest), even if such turnover has the effect of reducing the claim or recovery of the Term Secured Parties.

6.9 Voting. Each of the parties hereto acknowledges and agrees that the Term Collateral Agent and each Term Secured Party shall not be required to vote to approve any plan of reorganization for any reason. Except as otherwise contemplated by (i) the applicable plan of reorganization and mutually agreed to by the parties thereto or (ii) the other provisions of the Credit Documents, the Credit Documents shall not require any Secured Party to agree that any provision of any Credit Document shall survive the effectiveness of a plan of reorganization in an Insolvency or Liquidation Proceeding.

#### **SECTION 7. Reliance; Waivers; Etc.**

7.1 Reliance. Other than any reliance on the terms of this Agreement, the Revolving Collateral Agent, on behalf of itself and the Revolving Secured Parties, acknowledges that it and the Revolving Secured Parties have, independently and without reliance on the Term Collateral Agent or Term Secured Parties, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Revolving Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Revolving Documents or this Agreement. The Term Collateral Agent, on behalf of itself and the Term Secured Parties, acknowledges that it and the Term Secured Parties have, independently and without reliance on the Revolving Collateral Agent or any Revolving Secured Party, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Term Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Term Documents or this Agreement.

7.2 No Warranties or Liability. The Revolving Collateral Agent, on behalf of itself and the Revolving Secured Parties, acknowledges and agrees that the Term Collateral Agent and the Term Secured Parties have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Term Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the Term Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the Term Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Except as otherwise provided herein, the Term Collateral Agent, on behalf of itself and the Term Secured Parties, acknowledges and agrees that the Revolving Collateral Agent and the Revolving Secured Parties have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Revolving Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the Revolving Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the applicable Revolving Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. None of the Term



Collateral Agent or the Term Secured Parties shall have any duty to the Revolving Collateral Agent or the Revolving Secured Parties, and none of the Revolving Collateral Agent or the Revolving Secured Parties shall have any duty to any Term Collateral Agent or the Term Secured Parties, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any other Grantor (including any Revolving Documents and Term Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3 No Waiver of Lien Priorities. (a) No right of any Revolving Secured Parties, the Revolving Collateral Agent or any of them to enforce any provision of this Agreement or any Revolving Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any other Grantor or by any act or failure to act by any Revolving Secured Party or the Revolving Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Revolving Documents or any of the Term Documents, regardless of any knowledge thereof which the Revolving Collateral Agent or any Revolving Secured Parties, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of the Company and the other Grantors under the Revolving Documents and subject to the provisions of Section 5.3(a)), any Revolving Secured Parties, the Revolving Collateral Agent and any of them may, at any time and from time to time in accordance with the applicable Revolving Documents and/or applicable law, without the consent of, or notice to, the Term Collateral Agent or any Term Secured Parties, without incurring any liabilities to the Term Collateral Agent or any Term Secured Parties and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the Term Collateral Agent or any Term Secured Parties is affected, impaired or extinguished thereby) do any one or more of the following:

(i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Revolving Obligations or any Revolving Lien on any Collateral or guarantee thereof or any liability of the Company or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the applicable Revolving Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Revolving Liens held by the Revolving Collateral Agent or any such Revolving Secured Parties, the applicable Revolving Obligations or any of the applicable Revolving Documents; provided that any such increase in such Revolving Obligations shall not increase the sum of the Indebtedness constituting principal under the Revolving Credit Agreement and the face amount of any letters of credit issued under the Revolving Credit Agreement to an amount in excess of the Revolving Credit Cap Amount;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the ABL Collateral subject to its Revolving Lien or any liability of the Company or any other Grantor to such Revolving Secured Parties or the Revolving Collateral Agent, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any Revolving Obligation or any other liability of the Company or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the applicable Revolving Obligations) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against the Company or any security or any other Grantor or any other Person, elect any remedy and otherwise deal freely with the Company, any other Grantor or any ABL Collateral subject to its Revolving Lien and any security and any guarantor or any liability of the Company or any other Grantor to the applicable Revolving Secured Parties or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise provided herein, the Term Collateral Agent, on behalf of itself and the Term Secured Parties, also agrees that the Revolving Secured Parties and the Revolving Collateral Agent shall have no liability to the Term Collateral Agent or any Term Secured Parties, and the Term Collateral Agent, on behalf of itself and the Term Secured Parties, hereby waives any claim against any Revolving Secured Party or the Revolving Collateral Agent arising out of any and all actions which such Revolving Secured Parties or the Revolving Collateral Agent may take or permit or omit to take with respect to:

(i) the Revolving Documents (other than as provided in this Agreement);

(ii) the collection of the Revolving Obligations; or

(iii) the foreclosure upon, or sale, liquidation or other disposition of, any ABL Collateral subject to the Revolving Liens. The Term Collateral Agent, on behalf of itself and the Term Secured Parties, agrees that the Revolving Secured Parties and the Revolving Collateral Agent have no duty to them in respect of the maintenance or preservation of any Collateral subject to the Revolving Liens, the Revolving Obligations or otherwise.

(d) Until the Discharge of Revolving Obligations, the Term Collateral Agent, on behalf of itself and the Term Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to any ABL Collateral subject to any Revolving Lien or any other similar rights a junior secured creditor may have under applicable law.

7.4 Obligations Unconditional. All rights, interests, agreements and obligations of the Revolving Collateral Agent and Revolving Secured Parties and the Term Collateral Agent and Term Secured Parties hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Revolving Documents or any Term Documents;

(b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Revolving Obligations or Term Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Revolving Document or any Term Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Revolving Obligations or Term Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or

(e) any other circumstances that otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the Revolving Collateral Agent, any Revolving Obligations, any Revolving Secured Party, the Term Collateral Agent, any Term Obligations or any Term Secured Party in respect of this Agreement.

#### **SECTION 8. Miscellaneous.**

8.1 Conflicts. In the event of any express conflict between the provisions of this Agreement and the provisions of the Revolving Documents or the Term Documents, the provisions of this Agreement shall govern and control.

8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of Lien subordination and the Revolving Secured Parties may continue, at any time and without notice to the Term Collateral Agent or any Term Secured Party, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company or any Grantor constituting Revolving Obligations in reliance hereon. The Term Collateral Agent, on behalf of itself and the Term Secured Parties, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any

provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to the Company or any other Grantor shall include the Company or such Grantor as debtor and debtor-in-possession and any receiver or trustee for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding.

8.3 Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing and signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific matter involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, neither the Company nor any other Grantor shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights or obligations are affected; provided that the Company shall be provided with prior written notice of all amendments, modifications and waivers of any provision of this Agreement, which prior written notice shall be accompanied by copies of drafts of the applicable amendments, modifications and waivers.

8.4 Information Concerning Financial Condition of the Company and its Subsidiaries. Each of (a) the Revolving Collateral Agent and the Revolving Secured Parties and (b) the Term Collateral Agent and the Term Secured Parties shall be responsible for keeping themselves informed of (i) the financial condition of the Company and its Subsidiaries and all endorsers and/or guarantors of the Revolving Obligations or the Term Obligations and (ii) all other circumstances bearing upon the risk of nonpayment of the Revolving Obligations or the Term Obligations. Neither the Revolving Collateral Agent nor any Revolving Secured Party shall have any duty to advise the Term Collateral Agent or any Term Secured Party of information known to it regarding such condition or any such circumstances or otherwise. In the event the Revolving Collateral Agent or a Revolving Secured Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to the Term Collateral Agent or any Term Secured Party, it shall be under no obligation:

- (a) to make, and neither the Revolving Collateral Agent nor any Revolving Secured Party shall make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;
- (b) to provide any additional information or to provide any such information on any subsequent occasion;
- (c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

8.5 **Subrogation.** With respect to the value of any payments or distributions in cash, property or other assets that any of the Term Secured Parties or the Term Collateral Agent pays over to the Revolving Collateral Agent or any Revolving Secured Parties under the terms of this Agreement, the Term Secured Parties and Term Collateral Agent shall be subrogated to the rights of the Revolving Collateral Agent and the Revolving Secured Parties; provided that, the Term Collateral Agent, on behalf of itself and the Term Secured Parties, hereby agrees not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Revolving Obligations has occurred. The Company and each other Grantor acknowledge and agree that the value of any payments or distributions in cash, property or other assets received by the Term Collateral Agent or any Term Secured Parties that are paid over to the Revolving Collateral Agent or Revolving Secured Parties pursuant to this Agreement shall not reduce any of the applicable Term Obligations.

8.6 **Application of Payments.** All payments received by the Revolving Collateral Agent or any Revolving Secured Parties may be applied, reversed and reapplied, in whole or in part, to such part of the Revolving Obligations as shall be provided in the applicable Revolving Documents. The Term Collateral Agent, on behalf of itself and the Term Secured Parties, assents to any extension or postponement of the time of payment, subject to Section 5.3(a), of the applicable Revolving Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security which may at any time secure any part of the Revolving Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

8.7 **SUBMISSION TO JURISDICTION; WAIVERS.** (a) **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING HEREUNDER OR RELATING HERETO MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY:**

(1) **ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;**

(2) **WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;**

(3) **AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 8.8; AND**

(4) **AGREES THAT SERVICE AS PROVIDED IN CLAUSE (3) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.**

(b) **EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 8.7(b) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

8.8 Notices. All notices to the Revolving Secured Parties and the Term Secured Parties permitted or required under this Agreement shall also be sent to the Revolving Collateral Agent and the Term Collateral Agent, respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by facsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, or upon receipt if sent by facsimile or United States mail. For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.9 Further Assurances. The Revolving Collateral Agent, on behalf of itself and the Revolving Secured Parties, and the Term Collateral Agent, on behalf of itself and the Term Secured Parties, and the Company and each other Grantor agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Revolving Collateral Agent or the Term Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

8.10 APPLICABLE LAW. **THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

8.11 Binding on Successors and Assigns. This Agreement shall be binding upon the Revolving Collateral Agent, the Revolving Secured Parties, the Term Collateral Agent and the Term Secured Parties, the Company, the other Grantors and their respective successors and assigns.

8.12 Specific Performance. Each of the Revolving Collateral Agent and the Term Collateral Agent may demand specific performance of this Agreement. Each of the Revolving Collateral Agent, on behalf of itself and the Revolving Secured Parties, and the Term Collateral Agent, on behalf of itself and the Term Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Revolving Collateral Agent or the Revolving Secured Parties or the Term Collateral Agent or the Term Secured Parties, as the case may be.

8.13 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

8.14 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

8.15 Authorization. By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

8.16 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the Revolving Secured Parties and the Term Secured Parties. Nothing in this Agreement shall impair, as between the Company and the other Grantors and the Revolving Collateral Agent, the Revolving Secured Parties, the Term Collateral Agent and the Term Secured Parties, the obligations of the Company and the other Grantors to pay principal, interest, fees and other amounts as provided in the Revolving Documents and the Term Documents, respectively.

8.17 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of

(a) the Revolving Collateral Agent and the Revolving Secured Parties and (b) the Term Collateral Agent and the Term Secured Parties. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor, which are absolute and unconditional, to pay the Revolving Obligations and the Term Obligations as and when the same shall become due and payable in accordance with their terms.

8.18 Reciprocity. The Revolving Collateral Agent agrees, for itself and on behalf of the Revolving Secured Parties, that if it or any Revolving Secured Party, or any agent or trustee therefor, shall obtain any Lien on Non-ABL Collateral securing any Revolving Obligations, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, such Lien shall be junior and subordinate in all respects to all Term Liens on such Non-ABL Collateral, and neither the Revolving Collateral Agent nor any Revolving Secured Party shall take any action with respect to such Non-ABL Collateral or with respect to Term Liens on such Non-ABL Collateral or the Term Obligations insofar as they are secured by such Liens that the Term Collateral Agent or the Term Secured Parties would be prohibited by this Agreement from taking with respect to the ABL Collateral or with respect to Revolving Liens on such ABL Collateral or the Revolving Obligations.



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

WACHOVIA BANK, NATIONAL  
ASSOCIATION, as Revolving Collateral  
Agent,

By: /s/ Joseph L. White

Name: Joseph L. White

Title: Director

[ABL Intercreditor Agreement]

---

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

GOLDMAN SACHS CREDIT PARTNERS  
L.P., as Term Collateral Agent,

By: /s/ Bruce H. Mendelsohn  
Name: Bruce H. Mendelsohn  
Title: Authorized Signatory

[ABL Intercreditor Agreement]

---

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

SPECTRUM BRANDS, INC., as the Borrower

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Senior Vice President and Chief Financial Officer

[ABL Intercreditor Agreement]

---

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

ROV HOLDING, INC.,

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Vice President and Treasurer

---

[ABL Intercreditor Agreement]

---

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

ROVCAL, INC.,

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Vice President and Treasurer

[ABL Intercreditor Agreement]

---

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

UNITED INDUSTRIES CORPORATION,

By: /s/ Robert Prather

Name: Robert Prather

Title: Treasurer and Chief Financial Officer

---

[ABL Intercreditor Agreement]

---

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

SPECTRUM NEPTUNE US HOLDCO CORPORATION,

By: /s/ Anthony L. Genito

Name: Anthony L. Genito

Title: Vice President, Treasurer and Chief Financial Officer

[ABL Intercreditor Agreement]

---

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

SCHULTZ COMPANY,

By: /s/ Robert Prather

Name: Robert Prather

Title: Treasurer and Chief Financial Officer

---

[ABL Intercreditor Agreement]

---



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

UNITED PET GROUP, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

---

[ABL Intercreditor Agreement]

---

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

DB ONLINE, LLC,

By: United Pet Group, Inc., its Managing Member

By: /s/ Joe Gil

\_\_\_\_\_  
Name: Joe Gil

Title: Vice President Finance and Treasurer

[ABL Intercreditor Agreement]

---

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

SOUTHERN CALIFORNIA FOAM, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

---

[ABL Intercreditor Agreement]

---

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

AQUARIA, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

---

[ABL Intercreditor Agreement]

---

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

AQUARIUM SYSTEMS, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

---

[ABL Intercreditor Agreement]

---

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

PERFECTO MANUFACTURING, INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

---

[ABL Intercreditor Agreement]

---

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

TETRA HOLDING (US), INC.,

By: /s/ Joe Gil

Name: Joe Gil

Title: Vice President Finance and Treasurer

[ABL Intercreditor Agreement]

---

## **SPECTRUM BRANDS CLOSES \$225 MILLION ASSET-BASED REVOLVING CREDIT FACILITY**

ATLANTA, October 1, 2007 – (SPC: NYSE) – Spectrum Brands, Inc. announced today that it has successfully closed a \$225 million asset-based revolving credit facility with Goldman Sachs Credit Partners L.P. and Wachovia Bank, National Association. This revolving credit facility, un-drawn at closing, is available to finance seasonal working capital and other general corporate needs. Borrowings against the facility will bear an interest rate of 225 basis points over LIBOR or 125 basis points over the Base Rate as defined in the company's Senior Secured Credit Facility.

Concurrently, the company used \$200 million in cash on hand to pay down the \$200 million Dollar Term B II Facility under its Senior Secured Credit Facility.

### **About Spectrum Brands, Inc.**

Spectrum Brands is a global consumer products company and a leading supplier of batteries, portable lighting, lawn and garden products, household insect control, shaving and grooming products, personal care products and specialty pet supplies. Spectrum Brands' products are sold by the world's top 25 retailers and are available in more than one million stores in 120 countries around the world. Headquartered in Atlanta, Georgia, Spectrum Brands generated net sales of \$2.5 billion in fiscal 2006 and has approximately 7,500 employees worldwide. The company's stock trades on the New York Stock Exchange under the symbol SPC.

#### **Investor Contact:**

Nancy O'Donnell  
VP Investor Relations, Spectrum Brands  
770-829-6208

#### **Media Contact:**

Sard Verbinen & Co for Spectrum Brands  
Victoria Hofstad or Jamie Tully  
212-687-8080