

**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 (date of earliest event reported): July 8, 2005

LENNOX INTERNATIONAL INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-15149
(Commission File Number)

42-0991521
(IRS Employer Identification No.)

2140 Lake Park Blvd.
Richardson, Texas
(Address of principal executive offices)

75080
(Zip Code)

Registrant's telephone number, including area code: (972) 497-5000

(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 (*see* General Instruction A.2. below):

- 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))
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TABLE OF CONTENTS

[Item 1.01 Entry into a Material Definitive Agreement](#)

[Item 1.02 Termination of a Material Definitive Agreement](#)

[Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off- Balance Sheet Arrangement of a Registrant](#)

[Item 9.01 Financial Statements and Exhibits](#)

[SIGNATURES](#)

[Amended/Restated Credit Agreement](#)

[Amended/Restated Pledge Agreement](#)

[Press Release](#)

Item 1.01 Entry into a Material Definitive Agreement.

Item 1.02 Termination of a Material Definitive Agreement.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off- Balance Sheet Arrangement of a Registrant.

On July 8, 2005, Lennox International Inc. (the “Company”) entered into a \$400 million Second Amended and Restated Credit Agreement (the “Credit Agreement”) with Bank of America, N.A., as administrative agent (the “Administrative Agent”), JPMorgan Chase Bank, N.A., as syndication agent, Banc of America Securities LLC and J.P. Morgan Securities, Inc., as Joint Lead Arrangers, and the other Lenders party thereto. The Credit Agreement replaces the Company’s previous credit agreement, the Amended and Restated Credit Agreement, dated as of September 11, 2003, among the Company, JPMorgan Chase Bank, N.A., as administrative agent, and the other lenders named therein.

The Credit Agreement matures on July 8, 2010 and is a \$400 million revolving credit facility. The revolving credit facility includes a subfacility for swingline loans of up to \$30 million and provides for the issuance of letters of credit. The revolving loans bear interest at either (i) the LIBOR rate plus a margin not to exceed 1.2% that is based on the Company’s Debt to Adjusted EBITDA Ratio (as defined in the Credit Agreement) or (ii) the higher of (a) the Federal Funds Rate plus 0.50% or (b) the prime rate set by Bank of America, N.A. The Company may prepay the revolving loans at any time without premium or penalty, other than customary breakage costs in the case of LIBOR loans.

The Company will pay a facility fee in the range of 0.15% to 0.30% based on the Company’s Debt to Adjusted EBITDA Ratio. The Company will also pay a letter of credit fee, which includes a participation fee based on the Debt to Adjusted EBITDA Ratio and a fronting fee of 0.125% on the drawn amounts of any issued letter of credit.

The Credit Agreement contains financial covenants relating to leverage, interest coverage and net worth. Other covenants contained in the facility restrict, among other things, mergers, asset dispositions, guarantees, debt, liens, acquisitions, affiliate transactions and the Company’s ability to make restricted payments.

The Credit Agreement contains customary events of default. If any event of default occurs and is continuing, the Administrative Agent may terminate the Company’s right to borrow under the Credit Agreement and accelerate amounts due under the Credit Agreement (except for a bankruptcy event of default, in which case such amounts will automatically become due and payable and the lenders’ commitments will automatically terminate).

Pursuant to a Second Amended and Restated Pledge Agreement (the “Pledge Agreement”) between the Company and Bank of America, N.A., as collateral agent, the Company’s obligations under the Credit Agreement are secured by a pledge of the Company’s equity interests in Armstrong Air Conditioning Inc., Excel Comfort Systems Inc., Lennox Industries Inc., Lennox Global Inc. and Service Experts Inc. These subsidiaries have guaranteed the Company’s obligations under the Credit Agreement.

Table of Contents

A copy of the Credit Agreement is filed as Exhibit 10.1 hereto and a copy of the Pledge Agreement is filed as Exhibit 10.2 hereto. The foregoing descriptions of the Credit Agreement and the Pledge Agreement do not purport to be complete, and are qualified in their entirety by reference to the full text of the Credit Agreement and the Pledge Agreement, as applicable, which are incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits.

EXHIBIT NUMBER	DESCRIPTION
10.1	Second Amended and Restated Credit Agreement, dated July 8, 2005, among the Company, Bank of America, N.A., as administrative agent, JPMorgan Chase Bank, N.A., as syndication agent, Banc of America Securities LLC and J.P. Morgan Securities, Inc., as Joint Lead Arrangers, and the other Lenders party thereto.
10.2	Second Amended and Restated Pledge Agreement, dated July 8, 2005, between the Company and Bank of America, N.A., as collateral agent for itself and other creditors of the Company.
99.1	Press release dated July 11, 2005.

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.

LENNOX INTERNATIONAL INC.

Date: July 12, 2005

By: /s/ Kenneth C. Fernandez

Name: Kenneth C. Fernandez

Title: Associate General Counsel

[Table of Contents](#)

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10.1	Second Amended and Restated Credit Agreement, dated July 8, 2005, among the Company, Bank of America, N.A., as administrative agent, JPMorgan Chase Bank, N.A., as syndication agent, Banc of America Securities LLC and J.P. Morgan Securities, Inc., as Joint Lead Arrangers, and the other Lenders party thereto.
10.2	Second Amended and Restated Pledge Agreement, dated July 8, 2005, between the Company and Bank of America, N.A., as collateral agent for itself and other creditors of the Company.
99.1	Press release dated July 11, 2005.

LENNOX INTERNATIONAL INC.

**SECOND AMENDED AND RESTATED
REVOLVING CREDIT FACILITY AGREEMENT**

Dated
as of
July 8, 2005

BANK OF AMERICA, N.A.,
as Administrative Agent,

and

JPMORGAN CHASE BANK, N.A.,
as Syndication Agent,

with

BANC OF AMERICA SECURITIES LLC
and
J.P. MORGAN SECURITIES, INC.
as Joint Lead Arrangers

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS	1
Section 1.01. Defined Terms	1
Section 1.02. Terms Generally	18
Section 1.03. Types, Facility and Currencies of Loans	19
Section 1.04. Exchange Rates; Currency Equivalents	19
Section 1.05. Additional Alternative Currencies	19
Section 1.06. Change of Currency	20
ARTICLE 2. THE CREDITS	20
Section 2.01. Commitments	20
(a) Revolving Loans	20
(b) Swingline Loans	21
(c) Lender Participation in Swingline Loans	21
Section 2.02. Loans	22
(a) Type of Loans	22
(b) Funding Borrowings	22
(c) Continuations and Conversions	23
Section 2.03. Borrowing Procedure	24
Section 2.04. Fees	24
(a) Facility Fee	24
(b) Agent Fees	25
(c) Letter of Credit Fees	25
(d) Payment Provisions	25
Section 2.05. Repayment of Loans; Evidence of Indebtedness	25
(a) Repayment	25
(b) Maintenance of Loan Accounts by Lenders	25
(c) Maintenance of Loan Accounts by Administrative Agent	25
(d) Prima Facie Evidence	26
Section 2.06. Interest on Loans; Margin and Fees	26
(a) Eurocurrency Rate	26
(b) Base Rate and Eurodollar Daily Floating Rate	26
(c) Payment of Interest	26
(d) Determination of Applicable Margin	26
Section 2.07. Default Interest	27
Section 2.08. Alternate Rate of Interest	28
Section 2.09. Termination and Reduction of Commitments	28
(a) Termination on Maturity Date	28
(b) Optional Termination or Reduction	28
(c) Allocation of Reduction	28
Section 2.10. Prepayment Including Prepayment as a Result of a Change of Control	29
(a) Optional Prepayment	29
(b) Required Prepayment upon Reduction or Termination of Commitments	29
(c) Prepayment Offer Required as a Result of a Change of Control	29
(d) Outstandings in Excess of Commitments	30
(e) Breakage Costs and Interest	30

	<u>Page</u>
Section 2.11. Reserve Requirements; Change in Circumstances	30
(a) Change in Law; Increased Cost	30
(b) Capital Adequacy	31
(c) Delivery of Certificate	31
(d) No Waiver	31
(e) Change of Lending Office	31
Section 2.12. Change in Legality; Unavailability of Alternative Currency	32
(a) Illegality	32
(b) Unavailability of Alternative Currency Loans	32
Section 2.13. Pro Rata Treatment	32
Section 2.14. Sharing of Setoffs	33
Section 2.15. Payments	33
Section 2.16. Taxes	34
(a) Payment of Taxes; Gross Up	34
(b) Other Taxes	34
(c) Tax Indemnification	34
(d) Tax Refund	34
(e) Tax Receipts	35
(f) Survival	35
(g) Tax Withholding Exemptions	35
(h) Failure to Deliver Forms	35
(i) Mitigation by Lenders	35
(j) No Requirement to Deliver Tax Returns	36
Section 2.17. Intentionally Deleted	36
Section 2.18. Payments by Administrative Agent to the Lenders	36
Section 2.19. Letters of Credit	36
(a) The Letter of Credit Commitment	36
(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit	38
(c) Drawings and Reimbursements; Funding of Participations	39
(d) Repayment of Participations	41
(e) Obligations Absolute	41
(f) Role of each Issuing Bank	42
(g) Cash Collateral	43
(h) Applicability of ISP and UCP	43
(i) Conflict with Issuer Documents	43
(j) Letters of Credit Issued for Subsidiaries	44
Section 2.20. Increase of Commitments	44
Section 2.21. Obligations of Lenders Several	44
ARTICLE 3. REPRESENTATIONS AND WARRANTIES	44
Section 3.01. Organization; Powers	45
Section 3.02. Authorization	45
Section 3.03. Enforceability	45
Section 3.04. Governmental or Third Party Approvals	45
Section 3.05. Organization and Ownership of Shares of Subsidiaries	45
Section 3.06. Financial Statements	46
Section 3.07. Litigation; Observance of Statutes and Orders	46
Section 3.08. Taxes	46
Section 3.09. Title to Property; Leases	46

	<u>Page</u>
Section 3.10. Licenses, Permits, etc	46
Section 3.11. Compliance with ERISA	47
Section 3.12. Use of Proceeds	47
Section 3.13. Existing Indebtedness	47
Section 3.14. Foreign Assets Control Regulations, etc	47
Section 3.15. Margin Regulations; Investment Company Act; Public Utility Holding Company Act	48
Section 3.16. No Material Misstatements	48
Section 3.17. Environmental Compliance	48
Section 3.18. Insurance	48
Section 3.19. Solvency	48
Section 3.20. Perfected Security Interest	48
Section 3.21. Senior Debt	48
 ARTICLE 4. CONDITIONS OF LENDING	 49
Section 4.01. All Borrowings	49
Section 4.02. Effective Date	49
 ARTICLE 5. AFFIRMATIVE AND NEGATIVE COVENANTS	 51
Section 5.01. Compliance with Laws	51
Section 5.02. Insurance	51
Section 5.03. Maintenance of Properties and Lines of Business	51
Section 5.04. Payment of Taxes	51
Section 5.05. Corporate Existence, etc	51
Section 5.06. Intentionally Deleted	51
Section 5.07. Covenant to Guarantee and Secure Loans Equally	52
Section 5.08. Environmental Matters	52
Section 5.09. Transactions with Affiliates	52
Section 5.10. Merger, Consolidation, etc	52
Section 5.11. Sale of Assets, etc	53
Section 5.12. Indebtedness	53
Section 5.13. Liens	55
Section 5.14. Restricted Payments	57
Section 5.15. Financial Covenants	58
(a) Coverage Ratio	58
(b) Consolidated Indebtedness to Adjusted EBITDA	58
(c) Consolidated Net Worth	58
Section 5.16. Limitation on Restrictive Agreements	58
Section 5.17. Preferred Stock of Subsidiaries	59
Section 5.18. Financial and Business Information	59
(a) Quarterly Statements	59
(b) Annual Statements	59
(c) SEC and Other Reports	60
(d) Notice of Default or Event of Default	60
(e) ERISA Matters	60
(f) Requested Information	60
(g) Compliance Certificate	61
(h) Debt Rating	61
(i) Other Information	61
Section 5.19. Inspection; Confidentiality	62

	<u>Page</u>
(a) No Default	62
(b) Default	62
(c) Technical Data	63
Section 5.20. Books and Records	63
Section 5.21. New Material Subsidiaries	63
Section 5.22. Payments on Certain Indebtedness	63
Section 5.23. Investments, Loans, Advances, Guarantees and Acquisitions	64
Section 5.24. Amendment of Material Documents	66
Section 5.25. Swap Agreements	66
Section 5.26. Limitations on Receivable Securitizations	66
 ARTICLE 6. EVENTS OF DEFAULT	 66
 ARTICLE 7. THE ADMINISTRATIVE AGENT	 69
Section 7.01. Appointment and Authority	69
Section 7.02. Rights as a Lender	69
Section 7.03. Exculpatory Provisions	69
Section 7.04. Reliance by Administrative Agent	70
Section 7.05. Delegation of Duties	70
Section 7.06. Resignation of Administrative Agent	70
Section 7.07. Non-Reliance on Administrative Agent and Other Lenders	71
Section 7.08. No Other Duties, Etc	71
Section 7.09. Administrative Agent May File Proofs of Claim	71
Section 7.10. Collateral and Guaranty Matters	72
 ARTICLE 8. MISCELLANEOUS	 73
Section 8.01. Notices; Effectiveness; Electronic Communication	73
(a) Notices Generally	73
(b) Electronic Communications	73
(c) The Platform	73
(d) Change of Address, Etc	74
(e) Reliance by Administrative Agent and Lenders	74
Section 8.02. Survival of Representations and Warranties	74
Section 8.03. Binding Effect	74
Section 8.04. Successors and Assigns; Assignments and Participations	75
(a) Successors and Assigns Generally	75
(b) Assignments by Lenders	75
(c) Register	76
(d) Participations	76
(e) Limitations upon Participant Rights	77
(f) Certain Pledges	77
(g) Electronic Execution of Assignments	77
(h) Resignation as Swingline Lender after Assignment	77
Section 8.05. Expenses; Indemnity; Damage Waiver; Funding and Exchange Losses	78
Section 8.06. Right of Setoff	81
Section 8.07. Replacement of Lenders	81
Section 8.08. Governing Law; Jurisdiction, Etc	82
Section 8.09. Waivers; Amendments, Etc	83
Section 8.10. Entire Agreement; Amendment and Restatement	84

	<u>Page</u>
Section 8.11. Severability	84
Section 8.12. Counterparts	84
Section 8.13. Headings	85
Section 8.14. Interest Rate Limitation	85
Section 8.15. Treatment of Certain Information; Confidentiality	85
Section 8.16. Non–Application of Chapter 346 of the Texas Finance Code	86
Section 8.17. WAIVER OF JURY TRIAL	86
Section 8.18. USA PATRIOT Act Notice	87
Section 8.19. Judgment Currency	87
Section 8.20. Payments Set Aside	87
Section 8.21. Independence of Covenants	88

INDEX TO SCHEDULES AND EXHIBITS

Exhibit A	Form of Borrowing Request
Exhibit B	Form of Assignment and Assumption
Exhibit C	Matters to be Covered in Opinion of Counsel
Exhibit D	Form of Subsidiary Guaranty
Exhibit E	Form of Subsidiary Joinder Agreement
Exhibit F	Form of Intercreditor Agreement
Exhibit G	Form of Increased Commitment Supplement
Schedule 1.01	Existing Letters of Credit
Schedule 2.01	Commitments
Schedule 3.05	Lennox International Inc. Subsidiaries
Schedule 3.05A	Material Subsidiary Capitalization
Schedule 3.17	Environmental Disclosures
Schedule 5.12	Scheduled Indebtedness
Schedule 5.13	Existing Liens
Schedule 5.16	Existing Restrictions
Schedule 5.23	Existing Investments

INDEX TO SCHEDULES AND EXHIBITS, Solo Page

SECOND AMENDED AND RESTATED REVOLVING CREDIT FACILITY AGREEMENT

SECOND AMENDED AND RESTATED REVOLVING CREDIT FACILITY AGREEMENT (the “**Agreement**”) dated as of July 8, 2005, and effective as of the Effective Date, among **LENNOX INTERNATIONAL INC.**, a Delaware corporation (“**Borrower**”), the lenders listed in **Schedule 2.01, BANK OF AMERICA, N.A.** (“**Bank of America**”), as administrative agent for the Lenders (in such capacity, the “**Administrative Agent**”), and **JPMORGAN CHASE BANK, N.A.**, as syndication agent.

The Borrower, The Chase Manhattan Bank (which is now JPMorgan Chase Bank, N.A.), as administrative agent, and certain other parties entered into that certain Revolving Credit Facility Agreement dated as of July 29, 1999 (as amended from time to time, the “**Original Credit Agreement**”). The Original Credit Agreement was amended and restated by the Borrower, JPMorgan Chase Bank, N.A., as administrative agent, and certain other parties pursuant to that certain Amended and Restated Revolving Credit Facility Agreement dated as of September 11, 2003 (herein the “**Prior Credit Agreement**”). Upon the Effective Date of this Agreement, the loans under the Prior Credit Agreement will be repaid in their entirety with the proceeds of Loans made hereunder, and such Loans shall be evidenced by and governed by this Agreement and represented, evidenced or secured by the Loan Documents.

Accordingly, the parties hereto agree as follows:

ARTICLE 1.

DEFINITIONS

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

“**Adjusted EBITDA**” means, for any period (the “**Subject Period**”), the sum of (a) EBITDA plus (b), to the extent not included in EBITDA, all Acquired EBITDA. If at any time during the Subject Period the Borrower or any Subsidiary shall have made any Material Disposition, the Adjusted EBITDA for such Subject Period shall be reduced by an amount equal to the Adjusted EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Subject Period or increased by an amount equal to the Adjusted EBITDA (if negative) attributable thereto for such Subject Period. The term “**Material Disposition**” means any disposition of all of the Equity Interests in any Subsidiary or all or substantially all of the assets of any Subsidiary that yields gross proceeds to the Borrower or any of its Subsidiaries in excess of \$25,000,000. The term “**Acquired EBITDA**” means, with respect to any Person acquired, or substantially all of whose assets have been acquired, by the Borrower or any Subsidiary during the Subject Period (herein a “**Target**”), the total of the following for the portion of the Subject Period prior to the acquisition of such Person or its assets (the “**Test Period**”) determined on a consolidated basis in accordance with GAAP consistently applied from financial statements audited by a certified public accountant satisfactory to the Administrative Agent and covering the Test Period (provided that audited financial statements are not required if the annual earnings before interest, taxes, depreciation and amortization of the Target for the completed twelve month period prior to its acquisition is less than \$5,000,000, calculated in the same manner as set forth in the definition of Acquired EBITDA but for such twelve month period) and otherwise on a basis acceptable to the Administrative Agent:

- (i) the consolidated net income (or net loss) of the Target from operations, excluding the following:
 - (a) the proceeds of any life insurance policy;

(b) any gain arising from (1) the sale or other disposition of any assets (other than current assets) to the extent that the aggregate amount of gains exceeds the aggregate amount of losses from the sale, abandonment or other disposition of assets (other than current assets), (2) any write-up of assets, or (3) the acquisition by the Target of its outstanding securities constituting Indebtedness;

(c) any amount representing the interest of the Target in the undistributed earnings of any other Person;

(d) any earnings of any other Person accrued prior to the date it becomes a Subsidiary of the Target or is merged into or consolidated with the Target or a Subsidiary of the Target and any earnings, prior to the date of acquisition, of any other Person acquired in any other manner; and

(e) any deferred credit (or amortization of a deferred credit) arising from the acquisition of any Person; plus

(ii) the sum of (a) any deduction for (or less any gain from) income or franchise taxes included in determining such consolidated net income (or loss); plus (b) Interest Expenses deducted in determining such consolidated net income (or loss); plus (c) amortization and depreciation expense deducted in determining such consolidated net income (or loss) plus (d) any non-recurring and non-cash charges resulting from the application of GAAP that requires a charge against earnings for the impairment of goodwill to the extent not already added back or not included in determining such consolidated net income (or loss), all calculated without duplication; minus,

(iii) to the extent added in computing such consolidated net income (or loss) all income that has been included in the calculation of such net income for such period that will be eliminated in the future after the acquisition of such Target, as approved by the Administrative Agent.

“Adjustment Date” shall have the meaning assigned to it in Section 2.06(d).

“Administrative Agent” shall have the meaning assigned to it in the preamble hereto.

“Administrative Questionnaire” means an administrative questionnaire in the form provided by the Administrative Agent.

“Affiliate” means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. As used in this definition, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Borrower.

“Alternative Currency” means, with respect to a Letter of Credit or any Swingline Loan, each of the Euro, the Australian Dollar, and each other currency (other than Dollars) that is approved in accordance with Section 1.05.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the applicable Issuing Bank, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Applicable Margin” shall have the meaning assigned in Section 2.06(d).

“Applicable Percentage” means, with respect to any Revolving Lender, the percentage of the total Commitments represented by such Revolving Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentage shall be determined based upon the Revolving Exposures, or if all Loans have been repaid, based on the Commitments in effect immediately prior to their termination or expiration.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the applicable Issuing Bank, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an Assignment and Assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 8.04), and accepted by the Administrative Agent, in the form of Exhibit B or any other form approved by the Administrative Agent.

“Australian Dollars” and the symbol “A\$” each mean the lawful currency of the Commonwealth of Australia.

“Australian Dollar Loan” means a Swingline Loan denominated in Australian Dollars.

“Available Currency” means Dollars or an Alternative Currency.

“Bank of America” shall have the meaning assigned it in the preamble hereto.

“Base Rate” means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate.” The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

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

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

“Board of Directors” means the Board of Directors of Borrower or any duly authorized committee thereof.

“Borrower” shall have the meaning given such term in the preamble hereto.

“Borrower Materials” shall have the meaning given such term in Section 5.18.

“Borrower Payments” shall have the meaning given such term in Section 2.16(a).

“**Borrowing**” means a group of Loans of a single Type and a single currency under one of the facilities provided hereunder made on a single date and, with respect to Eurocurrency Rate Loans, as to which a single Interest Period is in effect.

“**Borrowing Request**” means a request made pursuant to Section 2.03 in the form of **Exhibit A**.

“**Business Day**” means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of New York or the State of Texas) on which banks are open for business in New York City, New York and Dallas, Texas; provided, however, that, when used in connection with a Eurocurrency Rate Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in deposits in the applicable Available Currency in London, England and in the interbank or other market used to determine the interest rate thereon.

“**Calculation Period**” shall have the meaning assigned it in Section 2.06(d).

“**Capital Lease**” means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

“**Cash Collateralize**” has the meaning specified in Section 2.19(g).

“**Cash Flow**” shall have the meaning assigned it in Section 5.15(a).

“**Change of Control**” shall have the meaning assigned it in Section 2.10(c).

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Agent**” means Bank of America as collateral agent under the terms of the Intercreditor Agreement (for the benefit of the Lenders, the lenders party to the Senior Note Purchase Agreements and any other lenders which become entitled to the benefits of the Liens granted in the Pledge Agreement under the terms of the Intercreditor Agreement) and its successors and assigns in such capacity.

“**Commitment**” means, with respect to each Revolving Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.09; (b) increased from time to time pursuant to Section 2.20; and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 8.04. The initial amount of each Revolving Lender’s Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Revolving Lenders’ Commitments is \$400,000,000. The Commitment of each Lender shall automatically and permanently terminate on the Maturity Date if not terminated earlier pursuant to the terms hereof.

“**Compliance Certificate**” means the certificate delivered pursuant to Section 5.18(g).

“**Confidential Information**” shall have the meaning assigned it in Section 8.15.

“**Consolidated Assets**” means the total assets of the Borrower and its Subsidiaries which would be shown as assets on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance

with GAAP, after eliminating all amounts properly attributable to minority interests, if any, in the stock and surplus of Subsidiaries.

“Consolidated Indebtedness” means, as of any date of determination, all Indebtedness and all Receivable Securitization Outstandings of the Borrower and its Subsidiaries outstanding on such date, after eliminating all offsetting debits and credits between the Borrower and its Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Borrower and its Subsidiaries in accordance with GAAP.

“Consolidated Net Income” means, for any period, the net income (or net loss) of the Borrower and its Subsidiaries for such period, determined in accordance with GAAP, excluding:

(a) the proceeds of any life insurance policy;

(b) any gain arising from (1) the sale or other disposition of any assets (other than current assets) to the extent that the aggregate amount of gains exceeds the aggregate amount of losses from the sale, abandonment or other disposition of assets (other than current assets), (2) any write-up of assets, or (3) the acquisition by the Borrower or any Subsidiary of its outstanding securities constituting Indebtedness;

(c) any amount representing the interest of the Borrower or any Subsidiary in the undistributed earnings of any other Person;

(d) any earnings of any other Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or a Subsidiary and any earnings, prior to the date of acquisition, of any other Person acquired in any other manner;

(e) any deferred credit (or amortization of a deferred credit) arising from the acquisition of any Person;

(f) any non-recurring and non cash charges resulting from the application of GAAP that requires a charge against earnings for the impairment of goodwill; and

(g) any non-recurring charges deducted in determining net income for such period which relate to the discontinuance of Subsidiary operations other than the domestic heating (with the exception of the hearth products division) and cooling manufacturing segment and the domestic refrigeration segment.

“Consolidated Net Worth” means, at any time,

(a) the sum of (i) the par value (or value stated on the books of the Borrower) of the capital stock (but excluding treasury stock and capital stock subscribed and unissued) of the Borrower and its Subsidiaries at such time plus (ii) the amount of paid-in-capital and retained earnings of the Borrower and its Subsidiaries at such time, in each case as such amounts would be shown on a consolidated balance sheet of the Borrower and its Subsidiaries as of such time prepared in accordance with GAAP, minus

(b) to the extent included in clause (a), all amounts properly attributable to minority interests, if any, in the stock and surplus of Subsidiaries.

“Continue”, “Continuation”, and “Continued” shall refer to the continuation pursuant to Section 2.02(c) of a Eurocurrency Rate Borrowing as a Eurocurrency Rate Borrowing from one Interest Period to the next Interest Period.

“Convert”, “Conversion”, and “Converted” shall refer to a conversion pursuant to Section 2.02(c) or Section 2.12 of one Type of Borrowing into another Type of Borrowing.

“Debt to Adjusted EBITDA Ratio” means, as of the last day of any fiscal quarter, the ratio of Consolidated Indebtedness outstanding as of such day to Adjusted EBITDA for the four (4) fiscal quarters then ended.

“Default” means any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed to fund any portion of the Loans, participations in Letters of Credit or participations in Swingline Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

“Distribution” means, in respect of any corporation, association or other business entity:

(a) dividends or other distributions or payments on capital stock or other Equity Interests of such corporation, association or other business entity (except distributions in such stock or other Equity Interests); and

(b) the redemption or acquisition of such stock or other Equity Interests including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests (except when solely in exchange for such stock or other Equity Interests) unless made, substantially contemporaneously, from the net proceeds of a sale of such stock or other Equity Interests.

“Dollar Equivalent” of any amount means, at the time of determination thereof: (a) if such amount is expressed in Dollars, such amount, and (b) if such amount is expressed in an Alternative Currency or any other currency, the equivalent of such amount in Dollars determined using the rate of exchange quoted by Bank of America in Dallas, Texas at 10:00 a.m. (Dallas, Texas time) on the date of determination (or, if such date is not a Business Day, the last Business Day prior thereto) to prime banks in New York for the spot purchase in the New York foreign exchange market of such amount of Dollars with such other currency.

“Dollars” or “\$” means lawful money of the United States of America.

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

“EBITDA” means, for any period, the total of the following calculated for Borrower and the Subsidiaries without duplication on a consolidated basis in accordance with GAAP consistently applied for such period: (a) Consolidated Net Income from operations; plus (b) any deduction for (or less any gain from) income or franchise taxes included in determining Consolidated Net Income; plus (c) Interest Expenses deducted in determining Consolidated Net Income; plus (d) amortization and depreciation expense deducted in determining Consolidated Net Income; plus (e) any non-recurring and non-cash charges resulting from application of GAAP that requires a charge against earnings for the impairment of goodwill to the extent not already added back in determining Consolidated Net Income; plus (f) any non-cash expenses that arose in connection with the grant of stock options to officers, directors and employees of the Borrower and the Subsidiaries and were deducted in determining Consolidated Net Income; minus (g) any cash payments made

in such period related to a non-cash expense added to Consolidated Net Income in a previous period pursuant to part (e) or part (f) hereof or pursuant to part (f) of the definition of Consolidated Net Income.

“Effective Date” shall have the meaning assigned to such term in Section 4.02.

“Eligible Assignee” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent and the Swingline Lender, and (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, “Eligible Assignee” shall not include the Borrower or any of the Borrower’s Affiliates or Subsidiaries.

“EMU” means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Entitled Person” shall have the meaning assigned to in Section 8.19.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to hazardous substances or wastes, air emissions, and discharges to waste or public systems.

“Equity Interests” means shares of the capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in a Person or any warrants, options or other rights entitling the holder thereof to purchase or acquire such interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is treated as a single employer together with the Borrower under Section 414 of the Code.

“Euro” means the single currency of the participating member states of the European Union.

“Eurocurrency Rate” means, for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch (or other Bank of America branch or Affiliate) to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on the Eurocurrency Rate. Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency. All Loans denominated in an Alternative Currency must be Eurocurrency Rate Loans.

“Eurodollar Daily Floating Rate” means, for any day, the fluctuating rate of interest equal to the Eurocurrency Rate (for a one month Interest Period commencing on such day) for deposits in Dollars, as adjusted on a daily basis for as long as the Swingline Loan to which such rate relates is outstanding and as adjusted from time to time in the Administrative Agent’s sole discretion for then-applicable reserve requirements, deposits insurance assessment rates and other regulatory costs.

“Eurodollar Daily Floating Rate Loan” means a Swingline Loan denominated in Dollars and bearing interest at the Eurodollar Daily Floating Rate.

“Euro Loan” means a Swingline Loan denominated in Euros.

“Event of Default” shall have the meaning assigned to such term in Article 6.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Existing Letters of Credit” means the letters of credit described on Schedule 1.01.

“Facility Fee” shall have the meaning assigned to such term in Section 2.04(a).

“Facility Fee Percentage” shall have the meaning assigned to it in Section 2.06(d).

“Fair Market Value” means, at any time and with respect to any property, the sale value of such property that would be realized in an arm’s length sale at such time between an informed and willing buyer and an informed and willing seller (neither being under a compulsion to buy or sell).

“Federal Funds Rate” means, for any day, the rate 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 rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fees” shall have the meaning assigned to it in Section 2.04(d).

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America or any state thereof or the District of Columbia.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States of America.

“Governmental Authority” means:

(a) the government of

(i) the United States of America, any other nation or any political subdivision thereof, whether state, provincial or local, or

(ii) any jurisdiction in which the Borrower or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Borrower or any Subsidiary, and

(b) 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, any such government.

“Guarantors” means Lennox Industries Inc., Armstrong Air Conditioning Inc., Excel Comfort Systems Inc., Service Experts Inc., Lennox Global Ltd., and any Material Subsidiary which becomes a party to the Subsidiary Guaranty in accordance with Section 5.21.

“Guaranty” or “Guarantee” means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any Indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such Indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such Indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such Indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such Indebtedness or obligation of the ability of any other Person to make payment of the Indebtedness or obligation; or

(d) otherwise to assure the owner of such Indebtedness or obligation against loss in respect thereof. In any computation of the Indebtedness or other liabilities of the obligor under any Guaranty, the Indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

“Hazardous Substance” means any contaminant, pollutant or toxic or hazardous substance, and any substance that is defined or listed as a hazardous, toxic or dangerous substance under any Environmental Law or that is otherwise regulated or prohibited under any Environmental Law as a hazardous, toxic or dangerous substance.

“Increase Amount” has the meaning assigned to such term in Section 2.20.

“Increased Commitment Supplement” has the meaning specified in Section 2.20.

“Indebtedness” with respect to any Person means, at any time, without duplication:

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatory redeemable Preferred Stock;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money, but excluding in any event obligations in respect of (1) trade or commercial letters of credit issued for the account of such Person in the ordinary course of its business and (2) stand-by letters of credit issued to support obligations of such Person that are not of a type described in any of clauses (a), (b), (c), (d), (f), (g) or (h) of this definition);

(f) all liabilities of such Person under Swap Agreements;

(g) all obligations of such Person, contingent or otherwise, for the payment of money under any noncompete, consulting or similar agreement entered into with the seller of an acquisition target or any other similar arrangements providing for the deferred payment of the purchase price for an acquisition; and

(h) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (g) hereof.

Indebtedness of any Person shall include all obligations of such Person of the character described in clauses (a) through (h) above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP. For purposes of determining the amount of the Indebtedness arising under Swap Agreements, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Insurance Subsidiary” means Lake Park Insurance, Ltd., a Bermuda corporation.

“Intercreditor Agreement” means that certain Second Amended and Restated Intercreditor Agreement dated the date hereof among the Obligated Parties, Bank of America, as collateral agent thereunder and as the Administrative Agent, and the lenders party to the Senior Note Purchase Agreements in substantially the form of Exhibit E, as the same may be amended or otherwise modified from time to time. The Intercreditor Agreement amends and restates the Prior Intercreditor Agreement in its entirety.

“Interest Expenses” means, for any period and any Person, the sum of the following calculated on a consolidated basis without duplication in accordance with GAAP: (a) total cash interest expense (including the

cash interest portion of Capital Leases but excluding interest expense derived from amortization of fees); plus (b) that portion of the difference between the face amount of accounts receivables sold in connection with securitization transactions and the purchase price paid in connection therewith that is representative of the interest expense that would have been paid if such transaction were accounted for as a financing (as calculated in a manner acceptable to the Administrative Agent); plus (c) that portion of amounts paid under Synthetic Lease Obligations that is representative of the interest expense that would have been paid if such transaction were accounted for as a Capital Lease or otherwise as a financing (as calculated in a manner acceptable to the Administrative Agent).

“Interest Payment Date” means (a) with respect to any Base Rate Borrowing or Eurodollar Daily Floating Rate Borrowing or the payment of the Fees under Section 2.04 (a) and (c), each March 31, June 30, September 30 and December 31, beginning on the first such date after the date hereof; (b) with respect to any Eurocurrency Rate Loan, the last day of the Interest Period applicable thereto and, in the case of such a Eurocurrency Rate Loan with an Interest Period of more than three months, each day that would have been an Interest Payment Date for such Eurocurrency Rate Loan if successive Interest Periods of three months duration, as the case may be, had been applicable to such Eurocurrency Rate Loan; and (c) in addition, with respect to all Borrowings, the date of any prepayment thereof and the Maturity Date.

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower in its Borrowing Request; provided that:

(i) 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 such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) 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

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

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by an Issuing Bank and the Borrower (or any Subsidiary of the Borrower) or in favor such Issuing Bank and relating to any such Letter of Credit.

“Issuing Bank” means any Revolving Lender, or any Affiliate of any Revolving Lender, in each case in its capacity as issuer of a Letter of Credit and any successor thereto permitted hereunder. No Lender has any obligation to issue any Letter of Credit hereunder except Bank of America subject to the provisions contained in Section 2.19.

“Joint Lead Arrangers” shall mean, collectively, Banc of America Securities, LLC (“BAS”) and J.P. Morgan Securities, Inc. (“JPMSI”).

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing. All L/C Borrowings shall be denominated in Dollars.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Disbursement” means a payment made by any Issuing Bank pursuant to a Letter of Credit.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts (as defined in Section 2.19(c)(i)), including all L/C Borrowings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lenders” means the Revolving Lenders and the Swingline Lender.

“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 hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit. Letters of Credit may be issued in Dollars or, if then approved by an Issuing Bank, in an Alternative Currency.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable Issuing Bank.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Liabilities” means, at any time, the sum of: (a) the Dollar Equivalent of the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the Dollar Equivalent of the aggregate amount of all L/C Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The Letter of Credit Liabilities of any Revolving Lender at any time shall be its Applicable Percentage of the total Letter of Credit Liabilities at such time.

“Lien” means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of Equity Interests, stockholder agreements, voting trust agreements and all similar arrangements).

“Loan” or “Loans” means Revolving Loans and Swingline Loans. Loans may be identified by Type, the applicable Available Currency or the facility under which such Loan was made as described in Section 1.03.

“Loan Documents” means this Agreement, the Subsidiary Guaranty, the Intercreditor Agreement, the Pledge Agreement and all other instruments, agreements and other documentation executed and delivered pursuant to or in connection with any such agreements, as such instruments, agreements, and other documentation may be amended or otherwise modified from time to time.

“Material” means material in relation to: (a) the business, operations, affairs, financial condition, assets, or properties of the Borrower and its Subsidiaries taken as a whole; or (b) any material portion of the Collateral (as defined in the Pledge Agreement).

“Material Adverse Effect” means a material adverse effect on: (a) the business, operations, affairs, financial condition, assets or properties of the Borrower and its Subsidiaries taken as a whole; (b) the ability of the Obligated Parties, taken as a whole, to perform their obligations under the Loan Documents, taken as a whole; or (c) the validity or enforceability of any Loan Document.

“Material Subsidiary” means any Subsidiary of the Borrower (except LPAC Corp., LPAC Corp. II and the Insurance Subsidiary) the book value (determined in accordance with GAAP) of whose total assets equals or exceeds ten percent (10%) of the book value (determined in accordance with GAAP) of the consolidated total assets of Borrower and all Subsidiaries as determined as of the last day of each fiscal quarter.

“Maturity Date” means July 8, 2010.

“Maximum Rate” shall have the meaning assigned it in Section 8.14.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means any Plan that is a “multiemployer plan” (as such term is defined in Section 4001(a)(3) of ERISA).

“Net Interest Expenses” shall have the meaning assigned to it in Section 5.15(a).

“New Lender” shall have the meaning assigned it in Section 2.20.

“New Lending Office” shall have the meaning assigned it in Section 2.16(g).

“New Material Domestic Subsidiary” shall have the meaning assigned it in Section 5.21(a).

“New Owner” shall have the meaning assigned it in Section 2.10(c).

“Non-U.S. Lender” shall have the meaning assigned it in Section 2.16(g).

“Norris Family” shall have the meaning assigned it in Section 2.10(c).

“Obligated Parties” means the Borrower, the Pledgors and the Guarantors.

“Original Currency” shall have the meaning assigned it in Section 8.19.

“Other Currency” shall have the meaning assigned it in Section 8.19.

“Other Taxes” shall have the meaning assigned it in Section 2.16(b).

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, an Issuing Bank, or the Swingline Lender, as the case may be, in accordance with banking industry rules on

interbank compensation, and (b) with respect to any amount denominated in another Available Currency, the rate of interest per annum at which overnight deposits in the applicable Available Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Participant” shall have the meaning assigned it in Section 8.04(d).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or other entity or a government or agency or political subdivision thereof.

“Plan” means an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Borrower or any ERISA Affiliate or with respect to which the Borrower or any ERISA Affiliate may have any liability.

“Platform” has the meaning specified in Section 5.18.

“Pledge Agreement” means that certain Second Amended and Restated Pledge Agreement dated the date hereof, executed by the Pledgors in favor of the Collateral Agent in accordance with the Intercreditor Agreement, as the same may be modified from time to time. The Pledge Agreement amends and restates that certain Amended and Restated Pledge Agreement dated September 11, 2003 executed by the Pledgors party thereto in favor of the Collateral Agent, which was itself an amendment and restatement of that certain Pledge Agreement dated August 15, 2003.

“Pledgors” means the Borrower and any Material Subsidiary which becomes a party to the Pledge Agreement in accordance with Section 5.21.

“Preferred Stock” means any class of capital stock of, or other Equity Interest in, a Person that is preferred over any other class of capital stock of, or other Equity Interest in, such Person as to the payment of dividends or other distributions or the payment of any amount upon liquidation or dissolution of such Person.

“Prior Credit Agreement” shall have the meaning assigned to it in the preamble hereto.

“Prior Intercreditor Agreement” means that certain Amended and Restated Intercreditor Agreement dated September 11, 2003 among the Borrower, certain Subsidiaries named therein, JPMorgan Chase Bank, N.A., as collateral agent thereunder and as the administrative agent under the Prior Credit Agreement (as defined therein), and the creditors party to the Senior Note Purchase Agreements. The Prior Intercreditor Agreement was itself an amendment and restatement of that certain Intercreditor Agreement dated August 15, 2001 among the Borrower, certain Subsidiaries named therein, The Chase Manhattan Bank (now JPMorgan Chase Bank, N.A.), as collateral agent thereunder and as the administrative agent under the credit agreement of even date therewith, JPMorgan Chase Bank, N.A. as administrative agent under the 364 day revolving credit facility of the Borrower, and the creditors party to the Senior Note Purchase Agreements.

“Private Placement Basket” means, at any date, an amount equal to \$350,000,000 minus (ii) the aggregate outstanding principal amount on such date of Indebtedness relating to the Senior Note Purchase Agreements permitted under Section 5.12(b) minus (iii) the aggregate outstanding principal amount on such date of Indebtedness incurred pursuant to Section 5.12(e).

“property” or “properties” means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

“Purchase Price” shall have the meaning assigned to it in Section 5.23.

“Receivable Securitization” means, with respect to a Person, a transaction or group of transactions typically referred to as a securitization in which the Person sells its accounts receivable in a transaction accounted for as a true sale to a special purpose bankruptcy remote entity that obtains debt financing to finance the purchase price.

“Receivable Securitization Outstanding” means, with respect to a Person, the aggregate amount outstanding (i.e., advanced as the purchase price and not repaid from collections) under all Receivable Securitization transactions of such Person that is representative of the principal amount that would be outstanding if such transaction were accounted for as a financing.

“Register” shall have the meaning assigned to it in Section 8.04.

“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.

“Required Lenders” means, at any time, Lenders having Commitments representing at least 51% of the Total Commitment or, for purposes of acceleration pursuant to Article 6, Lenders holding Loans or participation interests in Loans representing at least 51% of the aggregate principal amount of the Loans outstanding (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swingline Loans being deemed “held” by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the total outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Responsible Officer” means any Senior Financial Officer, the Chief Executive Officer of the Borrower, or the General Counsel of the Borrower.

“Restricted Payment” means any Distribution in respect of the Borrower or any Subsidiary (other than on account of capital stock or other Equity Interests of a Subsidiary owned legally and beneficially by the Borrower or another Subsidiary that is Wholly-Owned), including, without limitation, any Distribution resulting in the acquisition by the Borrower of Equity Interests which would constitute treasury stock. For purposes of this Agreement, the amount of any Restricted Payment made in property shall be the greater of (a) the Fair Market Value of such property (as determined in good faith by the board of directors (or equivalent governing body) of the Person making such Restricted Payment) and (b) the net book value thereof on the books of such Person, in each case determined as of the date on which such Restricted Payment is made.

“Revaluation Date” means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by the Issuing Bank under any Letter of Credit denominated in an Alternative Currency, and (iv) such additional dates as the Administrative Agent or the Issuing Bank shall determine or the Required Lenders shall require.

“Revolving Exposure” means, with respect to any Revolving Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans and the Dollar Equivalent of the amount of such Lender’s participating (or, with respect to the Swingline Lender or an Issuing Bank, its direct) interest in the outstanding Swingline Loans and Letters of Credit.

“Revolving Lenders” means the lenders listed in **Schedule 2.01**, together with their successors and assigns.

“Revolving Loan” shall have the meaning assigned to it in **Section 2.01(a)**.

“S&P” means Standard & Poor’s rating, group a division of the McGraw Hill Companies.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the Issuing Bank, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“Senior Financial Officer” means the chief financial officer, principal accounting officer, treasurer, assistant treasurer, treasury manager, director of treasury operations, or controller of the Borrower; provided that any executive vice president, the treasurer, any assistant treasurer, the treasury manager or the corporate controller of Borrower is authorized by Borrower to execute and deliver any Borrowing Request.

“Senior Note Purchase Agreements” means the following:

(i) nine separate Note Purchase Agreements, dated as of December 1, 1993, as each of the same have been amended and as each may be further amended, supplemented or otherwise modified from time to time, between the Borrower and each of The Prudential Insurance Company of America, Connecticut General Life Insurance Company, Life Insurance Company of North America, United of Omaha Life Insurance Company, Mutual of Omaha Insurance Company, Companion Life Insurance Company, United World Life Insurance Company, First Colony Life Insurance Company, General Electric Capital Assurance Company (as a successor) and GE Life and Annuity Assurance Company (as a successor);

(ii) three separate Note Purchase Agreements dated as of April 3, 1998, as each of the same have been amended and as each may be further amended, supplemented or otherwise modified from time to time, between the Borrower and each of The Prudential Insurance Company of America, U.S. Private Placement Fund, and Teachers Insurance and Annuity Association of America; and

(iii) that certain Master Shelf Agreement dated as of October 15, 1999 between the Borrower and The Prudential Insurance Company of America and certain affiliates of The Prudential Insurance Company of America which became bound by such agreement, as the same has been amended and as the same may be further amended, supplemented or otherwise modified from time to time.

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the Issuing Bank, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 10:00 a.m. (Dallas, Texas time) on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the Issuing Bank may obtain such spot rate from another financial institution designated by the Administrative Agent or the Issuing Bank if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the Issuing Bank may use such spot rate quoted on the date as of which the

foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Subject Indebtedness” shall have the meaning assigned to it in clause (f) of Article 6.

“Subordinated Indebtedness” means any Indebtedness, which by its terms is subordinated in right of payment to prior payment in full of the Obligations (as defined in the Intercreditor Agreement) arising under this Agreement and the other Loan Documents on terms acceptable to the Administrative Agent and shall include the Indebtedness evidenced by the Subordinated Notes.

“Subordinated Notes” means the Borrower’s original \$143,750,000 principal amount of 6.25% Convertible Subordinated Notes Due 2009 issued pursuant to that certain Indenture dated May 8, 2002 between the Borrower and The Bank of New York, as trustee.

“Subsidiary” means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Borrower.

“Subsidiary Guaranty” means that certain Second Amended and Restated Subsidiary Guaranty Agreement dated as of the date hereof executed by the Guarantors in favor of the Administrative Agent, the Issuing Banks and the Lenders, substantially in the form of Exhibit D hereto as the same may be modified pursuant to one or more Subsidiary Joinder Agreements and as the same may otherwise be modified from time to time. The Subsidiary Guaranty amends and restates in its entirety that certain Amended and Restated Subsidiary Guaranty Agreement dated September 11, 2003 executed by the Subsidiaries party thereto in favor of JPMorgan Chase Bank, N.A., as administrative agent, JPMorgan Chase Bank, N.A. as the issuing bank and the Lenders under the Prior Credit Agreement, which itself was an amendment and restatement of that certain Subsidiary Guaranty Agreement dated June 29, 2001.

“Subsidiary Joinder Agreement” means an agreement that has been or will be executed by a Material Subsidiary adding it as a party to the Subsidiary Guaranty, in substantially the form of Exhibit E hereto.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

“Swingline Lender” means Bank of America in its capacity as lender of the Swingline Loans.

“Swingline Loan” shall have the meaning assigned to it in Section 2.01(b).

“Syndication Agent” shall mean JPMorgan Chase Bank, N.A. (“JPMorgan”).

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Target” shall have the meaning assigned to it in the definition of “Adjusted EBITDA.”

“Taxes” shall have the meaning assigned it in Section 2.16(a).

“Total Commitment” means, at any time, the aggregate amount of Commitments of all the Revolving Lenders, as in effect at such time.

“Transactions” shall have the meaning assigned it in Section 3.02.

“Transfer” means, with respect to any Person, any transaction in which such Person sells, conveys, transfers or leases (as lessor) any of its property, including capital stock of, or other Equity Interest issued by, a Subsidiary.

“Transferee” shall have the meaning assigned to it in Section 2.16(a).

“Type”, when used in respect of any Loan or Borrowing, shall refer to the rate by reference to which interest on such Loan or Loans comprising such Borrowing is determined (*i.e.*, the Base Rate, Eurocurrency Rate, or Eurodollar Daily Floating Rate).

“Voting Rights” shall have the meaning assigned it in Section 2.10.

“Wholly-Owned Subsidiary” or “Wholly-Owned” when used in reference to a Subsidiary, means, at any time, any Subsidiary, one hundred percent (100%) of all of the Equity Interests of (except directors’ qualifying shares), and voting interests in, which are owned by any one or more of the Borrower and the Borrower’s other Wholly-Owned Subsidiaries at such time.

Section 1.02. Terms Generally. The definitions in Section 1.01 shall apply equally to both 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.” All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. If at any time any change in GAAP, or the interpretation thereof by a “Big Four” accounting firm (one of Deloitte, KPMG, PricewaterhouseCoopers, or Ernst & Young), 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 of such ratio or requirement in light of such change in GAAP or the interpretation thereof by a “Big Four” accounting firm (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 or interpretation thereof by a “Big Four” accounting firm, 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 or the interpretation thereof by a “Big Four” accounting firm.

Section 1.03. Types, Facility and Currencies of Loans. Loans and Borrowings hereunder are distinguished and referred to herein by Type (*i.e.*, Base Rate, Eurocurrency Rate or Eurodollar Daily Floating Rate), by the Available Currency in which it is denominated and by the facility provided herein under which such Loan or Borrowing is made (*i.e.*, under Section 2.01(a)) and thus a “Revolving Loan” or “Revolving Borrowing” or made under Section 2.01(b) and thus a “Swingline Loan” or “Swingline Borrowing”) or by any one or more of the foregoing.

Section 1.04. Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the Issuing Bank, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Borrowings and Letters of Credit denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Obligated Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the Issuing Bank, as applicable.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the Issuing Bank, as the case may be.

Section 1.05. Additional Alternative Currencies.

(a) The Borrower may from time to time request that Eurocurrency Rate Loans and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of “Alternative Currency”; provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Administrative Agent and the Swingline Lender; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the Issuing Bank.

(b) Any such request shall be made to the Administrative Agent not later than 10:00 a.m. (Dallas, Texas time), 10 Business Days prior to the date of the desired Borrowing or Letter of Credit issuance (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the Issuing Bank, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Administrative Agent shall promptly notify the Swingline Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the Issuing Bank thereof. The Swingline Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) or the Issuing Bank (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 10:00 a.m. (Dallas, Texas time), five Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by the Swingline Lender or the Issuing Bank, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a

refusal by the Swingline Lender or the Issuing Bank, as the case may be, to permit Eurocurrency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and the Swingline Lender consent to making Eurocurrency Rate Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Borrowings of Eurocurrency Rate Loans; and if the Administrative Agent and the Issuing Bank consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.05, the Administrative Agent shall promptly so notify the Borrower.

Section 1.06. Change of Currency.

(a) Each obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

Section 1.07. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time; provided further, however, that the stated amount of such Letter of Credit in effect at such time shall be used to determine the Letter of Credit Fees pursuant to Section 2.04(c).

ARTICLE 2.

THE CREDITS

Section 2.01. Commitments.

(a) Revolving Loans. Prior to the Effective Date, loans were previously made to the Borrower by the Lenders under the Prior Credit Agreement and, subject to the terms and conditions hereof and

relying upon the representations and warranties herein set forth, the parties hereto acknowledge and agree that, on the Effective Date, such loans shall be repaid with the proceeds of the hereinafter defined Revolving Loans in their entirety by, and the Revolving Loans shall be evidenced as Loans under this Agreement. Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, each Revolving Lender agrees, severally and not jointly, to make advances in Dollars (each such advance, herein a “**Revolving Loan**”) to the Borrower, at any time and from time to time on and after the Effective Date and until the earlier of the Maturity Date or the termination of the Commitment of such Revolving Lender, in an aggregate principal amount at any time outstanding not to exceed such Revolving Lender’s Commitment, subject, however, to the condition that the Revolving Exposure of a Revolving Lender shall not exceed such Revolving Lender’s Commitment and the total Revolving Exposures of all Revolving Lenders shall not exceed the Total Commitment. Within the foregoing limits, the Borrower may borrow, pay or prepay and reborrow Revolving Loans hereunder subject to the terms, conditions and limitations set forth herein. Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Revolving Lenders ratably in accordance with their Applicable Percentages; provided, however, that the failure of any Revolving Lender to make any Revolving Loan shall not in itself relieve any other Revolving Lender of its obligation to lend hereunder (it being understood, however, that no Revolving Lender shall be responsible for the failure of any other Revolving Lender to make any Revolving Loan required to be made by such other Revolving Lender). The Revolving Loans comprising any Borrowing shall be in an aggregate principal amount which is an integral multiple of \$1,000,000 and not less than \$5,000,000 (or an aggregate principal amount equal to the remaining balance of the Total Commitment less the total Revolving Exposure of all Revolving Lenders).

(b) **Swingline Loans.** Subject to the terms and conditions set forth herein, and in reliance upon the agreements of the other Lenders set forth in paragraph (c) below, the Swingline Lender agrees to make advances in such Available Currency as the Borrower may request (each such Advance, herein a “**Swingline Loan**”) to the Borrower from time to time on and after the Effective Date, until the earlier of the Maturity Date or the termination of the Commitments in an aggregate principal amount at any time outstanding that will not result in: (i) the aggregate principal amount of outstanding Swingline Loans denominated in Dollars exceeding \$30,000,000; (ii) the Dollar Equivalent of the aggregate principal amount of outstanding Euro Loans exceeding \$25,000,000; (iii) the Dollar Equivalent of the aggregate principal amount of outstanding Australian Dollar Loans exceeding \$25,000,000; and (iv) the total Revolving Exposures of all Revolving Lenders exceeding the Total Commitment. Notwithstanding the preceding sentence, if a new Alternative Currency is approved pursuant to Section 1.05, the Borrower may request, in writing, that the Swingline Lender agree to re-allocate the sublimits in clauses (ii) and (iii) above to provide a new sublimit for such new Alternative Currency; provided that such sublimits shall not exceed, in the aggregate, \$50,000,000. The Swingline Loans comprising any Borrowing shall be in an aggregate principal amount the Dollar Equivalent of which is an integral multiple of \$500,000 and not less than \$1,000,000 (or an aggregate principal amount the Dollar Equivalent of which is equal to the sum of the applicable limit set forth in clause (i), (ii) or (iii) above minus the Dollar Equivalent of all the Swingline Loans denominated in the same currency then outstanding). Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(c) **Lender Participation in Swingline Loans.** The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., Dallas, Texas time, 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. Such notice shall specify the Dollar Equivalent of the aggregate amount of Swingline Loans in which the 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 Revolving Lender’s Applicable Percentage of such Swingline 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 the Dollar

Equivalent of the principal amount outstanding in connection with such Swingline Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or Event of 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 Dollars in immediately available funds, and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. Upon the funding of a participation under this clause (c) in any Alternative Currency Loan, the portion of such Loans so funded shall be converted to Dollar Swingline Loans accruing interest as Base Rate Loans, but Bank of America's Applicable Percentage of such Loans shall remain as an Alternative Currency Loan. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of 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 its obligation for the payment thereof in full, notwithstanding any Default or Event of Default that may exist.

Section 2.02. Loans.

(a) Type of Loans. Each Borrowing (including any Borrowing of a Swingline Loan, which shall be a Eurodollar Daily Floating Rate Loan (for Swingline Loans denominated in Dollars only) or a Eurocurrency Rate Loan (for Swingline Loans denominated in an Alternative Currency)) shall be comprised entirely of Eurocurrency Rate Loans, Base Rate Loans, or as to Swingline Loans denominated in Dollars only, Eurodollar Daily Floating Rate Loans, as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurocurrency Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time.

(b) Funding Borrowings.

(i) Revolving Loans. Subject to paragraph (c) below, each Revolving Lender shall make each Revolving Loan to be made by it hereunder on the proposed date thereof by wire transfer of Dollars in immediately available funds to the Administrative Agent in Dallas, Texas, not later than 2:00 p.m., Dallas, Texas time, and the Administrative Agent shall by 3:00 p.m., Dallas, Texas time, credit the amounts so received to the account or accounts specified from time to time in one or more notices delivered by the Borrower to the Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Revolving Lenders or, if such Borrowing is to finance the reimbursement of an L/C Disbursement, such amounts shall be distributed to the applicable Issuing Bank.

Unless the Administrative Agent shall have received notice from a Revolving Lender prior to the date of any Borrowing (or, in the case of any Base Rate Borrowing or Eurodollar Daily Floating Rate Borrowing, prior to 2:00 p.m. on the date of such Borrowing) that such Revolving Lender will not make available to the Administrative Agent such Revolving Lender's portion of such Borrowing, the Administrative Agent may assume that such Revolving Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with this paragraph (b) and the

Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Revolving Lender shall not have made such portion available to the Administrative Agent, such Revolving Lender and the Borrower (without waiving any claim against such Revolving Lender for such Revolving Lender's failure to make such portion available) severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from and including the date such amount is made available to the Borrower until but excluding the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Revolving Loans comprising such Borrowing and (ii) in the case of such Revolving Lender, the Overnight Rate. If the Borrower and such Revolving Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Revolving Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Revolving Lender's Revolving Loan as part of such Borrowing for purposes of this Agreement. A notice of the Administrative Agent to any Revolving Lender or the Borrower with respect to any amount owing under this subsection shall be conclusive, absent manifest error.

(ii) Swingline Loans. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the account or accounts specified from time to time in one or more notices delivered by the Borrower to the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an L/C Disbursement as provided in Section 2.19(d), by remittance to the applicable Issuing Bank) by 2:00 p.m. (or if a Eurocurrency Rate Loan is requested, 1:00 p.m.), Dallas, Texas time, on the requested date of such Swingline Loan. With respect to the payment of any amount denominated in Euros, the Swingline Lender shall not be liable to the Borrower or any of the Lenders in any way whatsoever for any delay, or the consequences of any delay, in the crediting to any account of any amount required by this Agreement to be paid by the Swingline Lender in Euros if the Swingline Lender shall have taken all relevant steps to achieve, on the date required by this Agreement, the payment of such amount in Euros and in immediately available, freely transferable, cleared funds to the account with the bank in the principal financial center in the participating member state of the European Union which the Borrower shall have specified for such purpose. "All relevant steps" means all such steps as may be prescribed from time to time by the regulations or operating procedures of such clearing or settlement system as the Swingline Lender may from time to time determine for the purpose of clearing settling payments of Euros.

(c) Continuations and Conversions. Borrower may Convert all or any part of any Borrowing to a Borrowing of a different Type and Borrower may Continue all or any part of any Eurocurrency Rate Borrowing as a Borrowing of the same Type, by giving the Administrative Agent written notice on the Business Day of the Conversion into a Base Rate Borrowing and on the Business Day at least three Business Days before Conversion into or Continuation of a Eurocurrency Rate Borrowing specifying: (i) the Conversion or Continuation date, (ii) the amount of the Borrowing to be Converted or Continued, (iii) in the case of Conversions, the Type of Borrowing to be Converted into, and (iv) in the case of a Continuation of or Conversion into a Eurocurrency Rate Borrowing, the duration of the Interest Period applicable thereto; provided that (a) Eurocurrency Rate Borrowings may only be Converted on the last day of the Interest Period; (b) except for Conversions to Base Rate Borrowings, no Conversions shall be made while an Event of Default has occurred and is continuing; (c) only ten (10) Eurocurrency Rate Borrowings (including Eurocurrency Rate Borrowings of Swingline Loans) may be in existence at any one time; (d) no Interest Period may end after the Maturity Date; (e) a Borrowing denominated in one Available Currency may not be Converted by the Borrower into another Available Currency; (f) Dollar Base Rate Swingline Borrowings may not be Converted to Eurocurrency Rate Borrowings; and (g) Loans in an Alternative Currency may not be Converted to Base Rate Borrowings. All notices given under this Section shall be irrevocable and shall be given not later than

10:00 a.m. Dallas, Texas time on the Business Day that is not less than the number of Business Days specified above for such notice. If the Borrower shall fail to give the Administrative Agent the notice as specified above for Continuation or Conversion of a Eurocurrency Rate Borrowing prior to the end of the Interest Period with respect thereto, such Eurocurrency Rate Borrowing shall automatically be continued as a Eurocurrency Rate Borrowing with an Interest Period of one month's duration unless such Eurocurrency Rate Borrowing is a Dollar Borrowing and an Event of Default exists, in which case such Dollar Eurocurrency Rate Borrowing shall be automatically converted to an Base Rate Borrowing. The Administrative Agent shall promptly advise the Lenders of any notice given pursuant to this Section 2.02.

Section 2.03. Borrowing Procedure. In order to request a Borrowing, the Borrower shall hand deliver or telecopy to the Administrative Agent a duly completed Borrowing Request: (a) in the case of a Eurocurrency Rate Borrowing denominated in Dollars, not later than 12:00 noon, Dallas, Texas time, three Business Days before such Borrowing, (b) in the case of a Eurocurrency Rate Borrowing denominated in an Alternative Currency, not later than 12:00 noon, Dallas, Texas time, four Business Days before such Borrowing, and (c) in the case of a Base Rate Borrowing or a Eurodollar Daily Floating Rate Borrowing, not later than 12:00 noon, Dallas, Texas time, on the day of such Borrowing. Such notice shall be irrevocable and shall in each case specify: (i) whether the Borrowing then being requested is to be a Eurocurrency Rate Borrowing, a Base Rate Borrowing or a Eurodollar Daily Floating Rate Borrowing; (ii) whether the Borrowing is a Revolving Borrowing or a Swingline Borrowing and if a Swingline Borrowing, the applicable Available Currency in which the Borrower requests such Borrowing to be denominated; (iii) the date of such Borrowing (which shall be a Business Day) and the amount thereof; and (iv) if such Borrowing is to be a Eurocurrency Rate Borrowing, the Interest Period with respect thereto, which shall not end after the Maturity Date; provided that (A) the Borrower may not request a Eurocurrency Rate Dollar Swingline Borrowing, a Base Rate Australian Dollar Swingline Borrowing nor a Base Rate Euro Swingline Borrowing and (B) each such Borrowing of the type described in clause (A) preceding shall not be available herein. If no election as to the Type, currency or facility applicable to such Borrowing is specified in any such notice, then the requested Borrowing will be a Base Rate Dollar Swingline Borrowing. If no Interest Period with respect to any Eurocurrency Rate Borrowing is specified in any such notice, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Notwithstanding any other provision of this Agreement to the contrary, no Borrowing shall be requested if the Interest Period with respect thereto would end after the Maturity Date. When a Revolving Borrowing is requested, the Administrative Agent shall promptly advise the Revolving Lenders of the notice given pursuant to this Section 2.03 and of each Revolving Lender's portion of the requested Borrowing. When a Swingline Borrowing is requested, the Administrative Agent shall promptly advise the Swingline Lender of the notice given pursuant to this Section 2.03.

Section 2.04. Fees.

(a) Facility Fee. The Borrower agrees to pay to each Revolving Lender, through the Administrative Agent, a facility fee ("Facility Fee"), at a rate per annum equal to the Facility Fee Percentage from time to time in effect on the average daily amount of the Commitment of such Revolving Lender (or if such Commitment no longer exists, on the Dollar Equivalent amount of the Revolving Exposure of such Revolving Lender), during the period from and including the Effective Date to but excluding the later of the date on which such Revolving Lender's Commitment terminates and the date on which such Revolving Lender ceases to have any Revolving Exposure. Facility Fees accrued to each Interest Payment Date shall be payable in Dollars on such Interest Payment Date, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. All Facility Fees shall be computed based on the actual number of days elapsed (including the first day but excluding the last day) in a year of 365 or 366 days, as the case may be.

(b) Agent Fees. The Borrower agrees to pay the Administrative Agent and the Syndication Agent, respectively, the fees provided for in any separate agreement(s) between Borrower and Administrative Agent or between Borrower and Syndication Agent, on the dates required thereby.

(c) Letter of Credit Fees. The Borrower agrees to pay: (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to such Revolving Lender's participations in Letters of Credit, which shall accrue at the rate equal to the Applicable Margin (as defined and determined in accordance with Section 2.06(d)) on the average daily Dollar Equivalent amount of such Revolving Lender's Applicable Percentage of the Letter of Credit Liabilities (excluding any portion thereof attributable to unreimbursed L/C Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Revolving Lender's Commitment terminates and the date on which such Revolving Lender ceases to have any Letter of Credit Liabilities; and (ii) to each Issuing Bank a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily Dollar Equivalent amount of the Letter of Credit Liabilities (excluding any portion thereof attributable to unreimbursed L/C Disbursements) attributable to the Letters of Credit it has issued, during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any such Letter of Credit Liabilities, as well as each Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any of its Letters of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued to each Interest Payment Date shall be payable in Dollars no more than five (5) Business Days after such Interest Payment Date, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fee shall be computed based on a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) Payment Provisions. The fees payable under this Section 2.04 (the "**Fees**") shall be paid on the dates due, in Dollars and in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Revolving Lenders or to the applicable Issuing Bank. Once paid, none of such Fees shall be refundable under any circumstances.

Section 2.05. Repayment of Loans; Evidence of Indebtedness.

(a) Repayment. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. The Borrower hereby unconditionally promises to pay the unpaid principal amount of each Loan on the Maturity Date. Payments under this Section 2.05 shall be made to the Administrative Agent for the account of the Lenders. Following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Lenders as their interests may appear in accordance with this Agreement.

(b) Maintenance of Loan Accounts by Lenders. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) Maintenance of Loan Accounts by Administrative Agent. The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type of each Loan made and the Interest Period and Available Currency applicable thereto, (ii) the amount of each Letter of Credit, the Letter of Credit Liabilities applicable thereto and each Revolving Lender's participation interest therein, (iii) the amount of any principal, interest and Fees due and payable or to become due and payable from

the Borrower to each Lender and each Issuing Bank hereunder, (iv) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's and each Issuing Bank's share thereof.

(d) Prima Facie Evidence. The entries made in the accounts maintained pursuant to paragraphs (b) and (c) of this Section 2.05 shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein or an inconsistency between such accounts of a Lender and the accounts of the Administrative Agent shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms.

Section 2.06. Interest on Loans; Margin and Fees.

(a) Eurocurrency Rate. Subject to the provisions of Section 2.07, the Loans comprising each Eurocurrency Rate Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the applicable Eurocurrency Rate for the Interest Period and Available Currency in effect for such Borrowing plus the Applicable Margin from time to time in effect.

(b) Base Rate and Eurodollar Daily Floating Rate. Subject to the provisions of Section 2.07, the Loans comprising each Base Rate Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be) at a rate per annum equal to the Base Rate. Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Daily Floating Rate Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Eurodollar Daily Floating Rate plus the Applicable Margin for Eurocurrency Rate Loans as listed in subsection (d) below from time to time in effect.

(c) Payment of Interest. Interest on each Loan shall be payable on each Interest Payment Date applicable to such Loan except as otherwise provided in this Agreement. Interest on Loans, the principal amount of which is denominated in an Available Currency, shall be paid in that Available Currency. The applicable Eurocurrency Rate, Base Rate or Eurodollar Daily Floating Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error; provided that the Administrative Agent shall, upon request, provide to the Borrower a certificate setting forth in reasonable detail the basis for such determination.

(d) Determination of Applicable Margin. The Applicable Margin identified in this Section 2.06 and the Facility Fee Percentage identified in Section 2.04 shall be defined and determined as follows:

“Applicable Margin” means (i) during the period commencing on the Effective Date and ending on but not including the first Adjustment Date (as defined below), 0.925% per annum and (ii) during each period from and including one Adjustment Date to but excluding the next Adjustment Date (herein a “Calculation Period”), the percent per annum set forth in the table below under the applicable “Margin” heading opposite the Debt to Adjusted EBITDA Ratio which corresponds to the Debt to Adjusted EBITDA Ratio set forth in, and as calculated in accordance with, the applicable Compliance Certificate.

“Facility Fee Percentage” means (1) during the period commencing on the Effective Date and ending on but not including the first Adjustment Date, 0.20% per annum and (2) during each Calculation Period, the percent per annum set forth in the table below under the heading “Facility Fee Percentage” opposite the Debt to Adjusted EBITDA Ratio which

corresponds to the Debt to Adjusted EBITDA Ratio set forth in, and as calculated in accordance with, the applicable Compliance Certificate.

Level	Debt to Adjusted EBITDA Ratio	Facility Fee Percentage	Margin for Eurocurrency Rate Loans	Letter of Credit Fee	Margin for Base Rate Loans
I	Less than or equal to 1.00 to 1.00	.150%	0.475%	0.475%	0.0%
II	Less than or equal to 1.50 to 1.0 but greater than 1.0 to 1.0	.175%	0.700%	0.700%	0.0%
III	Less than or equal to 2.00 to 1.0 but greater than 1.50 to 1.0	.200%	0.925%	0.925%	0.0%
IV	Less than or equal to 2.50 to 1.0 but greater than 2.00 to 1.0	.250%	1.00%	1.00%	0.0%
V	Greater than 2.50 to 1.00	.300%	1.200%	1.200%	0.0%

Upon delivery of the Compliance Certificate pursuant to Section 5.18(g) in connection with the financial statements of the Borrower and its Subsidiaries required to be delivered pursuant to Sections 5.18(a) and (b), commencing with such Compliance Certificate delivered with respect to the fiscal quarter ending on June 30, 2005, the Applicable Margin (for Interest Periods commencing after the applicable Adjustment Date) and the Facility Fee Percentage shall automatically be adjusted in accordance with the Debt to Adjusted EBITDA Ratio set forth therein and the table set forth above, such automatic adjustment to take effect as of the first Business Day after the receipt by the Agent of the related Compliance Certificate pursuant to Section 5.18(g) (each such Business Day when such margin or fees change pursuant to this sentence or the next following sentence, herein an “**Adjustment Date**”). If the Borrower fails to deliver such Compliance Certificate which so sets forth the Debt to Adjusted EBITDA Ratio within the period of time required by Section 5.18(g): (i) the Applicable Margin (for Interest Periods commencing after the applicable Adjustment Date) shall automatically be adjusted to 1.200% per annum; and (ii) the Facility Fee Percentage shall automatically be adjusted to 0.300% per annum, such automatic adjustments to take effect as of the first Business Day after the last day on which the Borrower was required to deliver the applicable Compliance Certificate in accordance with Section 5.18(g) and to remain in effect until subsequently adjusted in accordance herewith upon the delivery of a Compliance Certificate.

Section 2.07. Default Interest. If the Borrower shall default in the payment of the principal of or interest on any Loan or any other amount becoming due hereunder, whether by scheduled maturity, notice of prepayment, acceleration or otherwise, the Borrower shall on demand from time to time from the Administrative Agent pay interest, to the extent permitted by law, on such defaulted amount up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum (computed as provided in Section 2.06(b)), equal to: (a) with respect to Base Rate Loans, the rate otherwise applicable thereto as determined in accordance with Section 2.06 plus 2%; (b) with respect to Eurocurrency Rate Loans, until the end of the Interest Period applicable thereto, the rate otherwise applicable thereto as determined in accordance with Section 2.06 plus 2% and after the end of the Interest Period therefor: (i) if such Eurocurrency Rate Loan is a Dollar Loan, the Base Rate plus 2% and (ii) if such Eurocurrency Rate Loan is an Alternative Currency Loan, the rate per annum applicable to Eurocurrency Rate Loans and the applicable currency with a one month Interest Period as the same may change each day plus 2%; (c) with respect to other amounts payable in an Alternative Currency hereunder, the rate determined pursuant to (b)(ii) immediately above; (d) with

respect to Eurodollar Daily Floating Rate Loans, the rate otherwise applicable thereto as determined in accordance with Section 2.06 plus 2%; and (e) with respect to other amounts, the Base Rate plus 2%.

Section 2.08. Alternate Rate of Interest. In the event, and on each occasion, that prior to the commencement of any Interest Period for a Eurocurrency Rate Borrowing or prior to any Eurodollar Daily Floating Rate Borrowing the Administrative Agent shall have determined (i) that deposits of the applicable Alternative Currency in the principal amounts of the Eurocurrency Rate Loans or Eurodollar Daily Floating Rate Loans comprising such Borrowing are not generally available in the market utilized to determine the applicable Eurocurrency Rate or (ii) that reasonable means do not exist for ascertaining the Eurocurrency Rate or Eurodollar Daily Floating Rate, the Administrative Agent shall, as soon as practicable thereafter, give telecopy notice of such determination to the Borrower and the Lenders. In the event of any such determination under clauses (i) or (ii) above and after notice thereof shall have been provided to the Borrower, until the Administrative Agent shall have advised the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, any request by the Borrower for a Eurocurrency Rate Borrowing or Eurodollar Daily Floating Rate Borrowing pursuant to Section 2.03 shall be deemed to be a request for a Dollar Base Rate Borrowing under the applicable requested facility (i.e., either Swingline or Revolver). In the event the Swingline Lender notifies the Administrative Agent that the rates at which deposits of the applicable Available Currency are being offered will not adequately and fairly reflect the cost to such Lender of making or maintaining the applicable Eurocurrency Rate Loans or Eurodollar Daily Floating Rate Loans during such Interest Period, the Administrative Agent shall notify the Borrower of such notice and until the Swingline Lender shall have advised the Administrative Agent that the circumstances giving rise to such notice no longer exist, any request by the Borrower for a Eurocurrency Rate Borrowing or Eurodollar Daily Floating Rate Borrowing in such Alternative Currency shall be deemed a request for a Dollar Base Rate Swingline Borrowing. Each determination by the Administrative Agent hereunder shall be made in good faith and shall be conclusive absent manifest error; provided that the Administrative Agent, shall, upon request, provide to the Borrower a certificate setting forth in reasonable detail the basis for such determination.

Section 2.09. Termination and Reduction of Commitments.

(a) Termination on Maturity Date. The commitment of the Swingline Lender under Section 2.01 to make Swingline Loans, and the Commitments of the Revolving Lenders shall automatically be terminated on the Maturity Date. Such commitments may also terminate as provided in Section 2.10(c) and Article 6.

(b) Optional Termination or Reduction. Upon at least three Business Days' prior irrevocable written notice to the Administrative Agent, the Borrower may, at any time, in whole permanently terminate, or, from time to time, in part permanently reduce, the Total Commitment; provided, however, that (i) each partial reduction of the Total Commitment shall be in an integral multiple of \$5,000,000 and in a minimum principal amount of \$5,000,000; (ii) no such termination or reduction shall be made which would reduce the Total Commitment to an amount less than \$50,000,000, unless the result of such termination or reduction is to reduce the Total Commitment to \$0; and (iii) no such termination or reduction shall reduce the Total Commitment below the then outstanding Revolving Exposures. The Administrative Agent shall advise the Lenders of any notice given pursuant to this Section 2.09(b) and of each Lender's portion of any such termination or reduction of the Total Commitment. Upon the termination of the Total Commitment, the commitment of the Swingline Lender under Section 2.01 shall also terminate.

(c) Allocation of Reduction. Each reduction in the Total Commitment hereunder shall be made ratably among the Lenders in accordance with their respective Commitments. The Borrower shall pay to the Administrative Agent for the account of the Lenders, on the date of each termination or reduction of the Total Commitment, the Facility Fees on the amount of the Commitments so terminated or reduced accrued through the date of such termination or reduction.

Section 2.10. Prepayment Including Prepayment as a Result of a Change of Control.

(a) Optional Prepayment. The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon giving teletype notice (or telephone notice promptly confirmed by teletype) to the Administrative Agent: (i) before 10:00 a.m., Dallas, Texas time, three Business Days prior to prepayment, in the case of Eurocurrency Rate Loans denominated in Dollars which prepayment shall be accompanied by any amount owed under Section 8.05(b), (ii) before 10:00 a.m., Dallas, Texas time, four Business Days prior to prepayment, in the case of Eurocurrency Rate Loans denominated in an Alternative Currency which prepayment shall be accompanied by any amount owed under Section 8.05(b), and (iii) before 10:00 a.m., Dallas, Texas time, one Business Day prior to prepayment, in the case of Base Rate Loans or Eurodollar Daily Floating Rate Loans; provided, however, that each partial prepayment shall be in an amount which is an integral multiple of \$1,000,000 and not less than \$5,000,000. Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid, shall be irrevocable and shall commit the Borrower to prepay such Borrowing (or portion thereof) by the amount stated therein on the date stated therein.

(b) Required Prepayment upon Reduction or Termination of Commitments. On the date of any termination or reduction of the Total Commitment pursuant to Section 2.09, the Borrower shall pay or prepay so much of the Borrowings as shall be necessary in order that the Dollar Equivalent of the aggregate outstanding Revolving Exposure of all Lenders will not exceed the Total Commitment after giving effect to such termination or reduction.

(c) Prepayment Offer Required as a Result of a Change of Control. At least 15 Business Days and not more than 90 days prior to the occurrence of any Change of Control, the Borrower will give written notice thereof to each Lender. Such notice shall contain (i) an offer by the Borrower to prepay, on the date of such Change of Control or, if such notice shall be delivered less than 35 days prior to the date of such Change of Control, on the date 35 days after the date of such notice (the "**Prepayment Date**"), all Loans made by each Lender, together with interest accrued thereon to the Prepayment Date and all other liquidated obligations owed to such Lender under the terms hereof, (ii) the estimated amount of accrued interest, showing in reasonable detail the calculation thereof and (iii) the Borrower's estimate of the date on which such Change of Control shall occur. Said offer shall be deemed to lapse as to any such Lender which has not replied affirmatively thereto in writing within 35 days of the giving of such notice. As soon as practicable (and in any event at least 24 hours) prior to such Change of Control, the Borrower shall give written confirmation of the date thereof to each such Lender that has affirmatively replied to the notice given pursuant to the first sentence of this Section 2.10(c). Borrower shall, on the Prepayment Date, prepay to each Lender that has affirmatively replied to the notice given pursuant to the first sentence of this Section 2.10(c), all Loans then held by such Lender together with accrued interest thereon and all other liquidated obligations owed to such Lender under the terms hereof. Thereupon, provided the Administrative Agent and Swingline Lender have agreed to reasonably satisfactory arrangements regarding such Lender's participation in Swingline Loans and/or Letters of Credit, each Lender that shall have received such prepayment shall have no further obligation to make Revolving Loans or participate in Swingline Loans or Letters of Credit whether outstanding as of the Prepayment Date or made or issued after the Prepayment Date and the Total Commitment shall be reduced by the amount of each such Lender's Commitment.

For the purposes of this Section 2.10(c), a "**Change of Control**" shall be deemed to occur if any New Owner shall acquire beneficial ownership of shares in the Borrower having Voting Rights pertaining thereto which would allow such New Owner to elect more members of the Board of Directors than could be elected by the exercise of all Voting Rights pertaining to shares in the Borrower then owned beneficially by the Norris Family. As used in this Section 2.10(c):

“**Voting Rights**” pertaining to shares of a corporation means the rights to cast votes for the election of directors of such corporation in ordinary circumstances (without consideration of voting rights which exist only in the event of contingencies).

“**Norris Family**” means all persons who are lineal descendants of D.W. Norris (by birth or adoption), all spouses of such descendants, all estates of such descendants or spouses which are in the course of administration, all trusts for the benefit of such descendants or spouses, and all corporations or other entities in which, directly or indirectly, such descendants or spouses (either alone or in conjunction with other such descendants or spouses) have the right, whether by ownership of stock or other equity interests or otherwise, to direct the management and policies of such corporations or other entities (each such person, spouse, estate, trust, corporation or entity being referred to herein as a “member” of the Norris Family). In addition, so long as any employee stock ownership plan exercises its Voting Rights in the same manner as members of the Norris Family (exclusive of employee stock ownership plans) who have a majority of the Voting Rights exercised by all such members of the Norris Family, such employee stock ownership plan shall be deemed a member of the Norris Family.

“**New Owner**” means any Person (other than a member of the Norris Family), or any syndicate or group of Persons (exclusive of all members of the Norris Family) which would be deemed a “person” or “group” for the purposes of Section 13(d) of the Exchange Act, who directly or indirectly acquires shares in the Borrower.

(d) Outstandings in Excess of Commitments. If on any date of a Borrowing, any Interest Payment Date, any date of the issuance of a Letter of Credit, any date when a Compliance Certificate is delivered under Section 5.18(g) or any other date selected by the Administrative Agent, the (i) aggregate Revolving Exposures of all Lenders exceeds the Total Commitment; (ii) the Dollar Equivalent of the aggregate principal amount of outstanding Australian Dollar Loans exceeds \$25,000,000; or (iii) the Dollar Equivalent of the aggregate principal amount of outstanding Euro Loans exceeds \$25,000,000, then, in each case, Borrower shall, within two Business Days, repay to the Administrative Agent an amount equal to the applicable excess.

(e) Breakage Costs and Interest. All prepayments under this Section 2.10 shall be subject to Section 8.05(e) but otherwise without premium or penalty. All prepayments under this Section 2.10 shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment.

Section 2.11. Reserve Requirements; Change in Circumstances.

(a) Change in Law; Increased Cost. Notwithstanding any other provision herein, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof (whether or not having the force of law) shall change the basis of taxation of payments to any Issuing Bank or any Lender hereunder (except for changes in respect of taxes on the overall net income of such Issuing Bank or such Lender or its lending office imposed by the jurisdiction in which its principal executive office or lending office is located), or shall result in the imposition, modification or applicability of any reserve, special deposit or similar requirement against assets of, deposits with or for the account of or credit extended by any Lender or any Issuing Bank, or shall result in the imposition on any Lender, any Issuing Bank or any interbank market utilized to determine the rate hereunder or any other condition affecting this Agreement, such Lender’s Commitment, any Loan made by such Lender or any Letter of Credit or participation interest therein, and the result of any of the foregoing shall be to increase the cost to such Lender or such Issuing Bank of making or maintaining any Loan or issuing, maintaining or participating in any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise) by an amount deemed by such Lender or the Issuing Bank to be material, then the Borrower shall, upon receipt of the notice and certificate provided for in Section 2.11(c), promptly pay to such Lender or

Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank for such additional costs incurred or reduction suffered.

(b) Capital Adequacy. If any Lender or any Issuing Bank shall have determined that the adoption after the date hereof of any other law, rule, regulation or guideline regarding capital adequacy, or any change in any of the foregoing or in the interpretation or administration of any of the foregoing by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or any lending office of such Lender) or any Issuing Bank or any Lender's or any Issuing Bank's holding company with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, such Lender's Commitment, the Loans made by such Lender pursuant hereto, or any Letter of Credit or participation interest therein to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy) by an amount deemed by such Lender or Issuing Bank to be material, then from time to time such additional amount or amounts as will compensate such Lender or Issuing Bank for any such reduction suffered will be paid by the Borrower to such Lender or Issuing Bank, as applicable.

(c) Delivery of Certificate. A certificate of each affected party setting forth such amount or amounts as shall be necessary to compensate such party or its holding company as specified in paragraph (a) or (b) above, as the case may be, and containing an explanation in reasonable detail of the manner in which such amount or amounts shall have been determined, shall be delivered to the Borrower, and shall be conclusive absent manifest error. The Borrower shall pay each Lender and each Issuing Bank, as applicable, the amount shown as due on any such certificate delivered by it within 10 days after its receipt of the same. Each Lender and each Issuing Bank shall give prompt notice to the Borrower of any event of which it has knowledge, occurring after the date hereof, that it has determined will require compensation by the Borrower pursuant to this Section; provided, however, that failure by such Lender or Issuing Bank to give such notice shall not constitute a waiver of such party's right to demand compensation hereunder.

(d) No Waiver. Failure on the part of any party to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital of the type described in paragraph (a) or (b) of this Section 2.11 with respect to any period shall not constitute a waiver of such party's right to demand compensation with respect to such period or any other period; provided, however, that neither any Lender nor any Issuing Bank shall be entitled to compensation under this Section 2.11 for any costs incurred or reductions suffered with respect to any date unless it shall have notified the Borrower that it will demand compensation for such costs or reductions under paragraph (c) above not more than 90 days after the later of (i) such date and (ii) the date on which it shall have become aware of such costs or reductions. The protection of this Section shall be available to each Lender and each Issuing Bank regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, guideline or other change or condition which shall have occurred or been imposed.

(e) Change of Lending Office. Each Lender and each Issuing Bank agrees that it will designate a different lending or issuing office, as applicable, if such designation will avoid the need for, or reduce the amount of, compensation payable under this Section 2.11 and will not, in its reasonable judgment, be disadvantageous to its interests.

Section 2.12. Change in Legality; Unavailability of Alternative Currency.

(a) Illegality. Notwithstanding any other provision herein, if any change in any law or regulation or in the interpretation thereof by any Governmental Authority charged with the administration or interpretation thereof shall make it unlawful for any Lender to make or maintain any Eurocurrency Rate Loan or to give effect to its obligations as contemplated hereby with respect to any Eurocurrency Rate Loan, then, by written notice to the Borrower and to the Administrative Agent, such Lender may:

(i) declare that the applicable Eurocurrency Rate Loans will not thereafter be made by such Lender hereunder, whereupon any request for such a Eurocurrency Rate Borrowing shall, as to such Lender only, be deemed a request for a Base Rate Dollar Loan unless such declaration shall be subsequently withdrawn (any Lender delivering such a declaration hereby agreeing to withdraw such declaration promptly upon determining that such event of illegality no longer exists); and

(ii) require that all outstanding Eurocurrency Rate Loans affected by the illegality made by it be either (A), if such Loans are Dollar Loans, Converted to Base Rate Loans, in which event all such Eurocurrency Rate Loans shall be automatically Converted to Base Rate Loans as of the effective date of such notice as provided below, or (B) repaid if such Eurocurrency Rate Loan is an Alternative Currency Loan.

In the event any Lender shall exercise its rights under clauses (i) or (ii) above, all payments and prepayments of principal which would otherwise have been applied to repay the affected Eurocurrency Rate Loans that would have been made by such Lender or the Converted Eurocurrency Rate Loans of such Lender shall instead be applied to repay the Base Rate Loans made by such Lender in lieu of, or resulting from the Conversion of, such Eurocurrency Rate Loans. For purposes of this Section 2.12 (a), a notice by any Lender shall be effective as to each Eurocurrency Rate Loan, if lawful, on the last day of the Interest Period currently applicable to such Eurocurrency Rate Loan; in all other cases such notice shall be effective on the date of receipt.

(b) Unavailability of Alternative Currency Loans. Notwithstanding any other provision herein, if any change in any law or regulation or in the interpretation thereof by any Governmental Authority charged with the administration or interpretation thereof shall make it unlawful for the Swingline Lender to make or maintain any Alternative Currency Loan or to give effect to its obligations as contemplated hereby with respect to any such Loan or in the event that there shall occur any material adverse change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which would in the reasonable opinion of the Swingline Lender make it impracticable for Swingline Loans to be denominated in an Alternative Currency, then, by written notice to the Borrower and to the Administrative Agent, the Swingline Lender may:

(i) declare that such Loans will not thereafter be made, whereupon any request for such a Borrowing shall be deemed a request for a Dollar Base Rate Loan unless such declaration shall be subsequently withdrawn (the Swingline Lender agreeing to withdraw such declaration promptly upon determining that the applicable event or condition no longer exists); and

(ii) require that all outstanding Alternative Currency Loans so affected be repaid.

Section 2.13. Pro Rata Treatment. Each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each payment of the Facility Fees, each Conversion or Continuation of any Loans, and each reduction of the Total Commitment, shall be allocated pro rata among the Lenders in accordance with their respective Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans) except: (a) as

required under Sections 2.12, 2.15 and 2.17 or as otherwise expressly provided herein; (b) with respect to Swingline Borrowings and Swingline Loans; and (c) if interest shall accrue on any portion of a Borrowing held by a Lender at a rate different from the rate applicable to the other Lenders, payment and distribution of interest shall be based on the respective accrual rates applicable to such Borrowing.

Section 2.14. Sharing of Setoffs. Subject to the terms of the Intercreditor Agreement which shall have precedence over any conflicting provisions in this Section 2.14, each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any amounts due hereunder as a result of which the unpaid principal portion of such amount shall be proportionately less than the unpaid principal portion of such amount owed to any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in such amounts of such other Lender, so that the aggregate unpaid principal amount of the obligations owed by the Borrower hereunder and participations in such obligations held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all obligations owed by the Borrower hereunder then outstanding as the principal amount of such obligations prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all such obligations outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; provided, however, that, if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.14 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in the obligations owed hereunder deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan in the amount of such participation.

Section 2.15. Payments. The Borrower shall make each payment (including principal of or interest on any Borrowing or any Fees or other amounts hereunder) from an account in the United States (or such other account in such other jurisdiction as the Administrative Agent may designate for such purpose) not later than 11:00 a.m., Dallas, Texas time, on the date when due in the applicable Available Currency to the Administrative Agent at its offices at 901 Main Street, Dallas, TX 75202 or, in the case of payments to be made directly to another party hereto in accordance with the terms hereof, to such party as such party shall direct, in each case, in immediately available funds. All payments made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable. Payments of principal and interest on or in respect of the Swingline Loans received by the Administrative Agent shall be paid to the Swingline Lender except that any amounts received 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 Revolving Lenders that shall have funded their participation interests therein and to the Swingline Lender, as their interests may appear. Payments made in respect of the L/C Disbursements received by the Administrative Agent shall be paid to the applicable Issuing Bank except that any amounts received in respect of any L/C Disbursement after receipt by such Issuing Bank of the proceeds of a sale of participations therein shall be promptly remitted to the Revolving Lenders that shall have funded their participation interests therein and to the applicable Issuing Bank, as their interests may appear.

Section 2.16. Taxes.

(a) Payment of Taxes; Gross Up. Any and all payments of principal and interest on any Borrowings, or of any Fees or indemnity or expense reimbursements by the Borrower under any Loan Document and any other payments by Borrower or any Obligated Party under the Loan Documents ("Borrower Payments") shall be made, in accordance with Section 2.15, free and clear of and without deduction for any and all current or future federal, state, local and other governmental taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect to the Borrower Payments, but only to the extent reasonably attributable to the Borrower Payments, excluding (i) income taxes imposed on the net income of the Administrative Agent, any Issuing Bank or any Lender (or any transferee or assignee thereof, including a participation holder (any such entity a "Transferee")) and (ii) franchise taxes imposed on the net income of the Administrative Agent, any Issuing Bank or any Lender (or Transferee), in each case by the jurisdiction under the laws of which such party (or Transferee) is organized or doing business through offices or branches located therein, or any political subdivision thereof (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities, collectively or individually, "Taxes"). If the Borrower shall be required to deduct any Taxes from or in respect of any sum payable hereunder to the Administrative Agent, any Issuing Bank or any Lender (or any Transferee), (i) the sum payable shall be increased by the amount (an "additional amount") necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.16) such party (or Transferee) (as the case may be) shall receive 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 pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Other Taxes. In addition, the Borrower shall pay to the relevant Governmental Authority in accordance with applicable law any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, any Loan Document ("Other Taxes").

(c) Tax Indemnification. The Borrower shall indemnify the Administrative Agent, each Issuing Bank and each Lender (or Transferee thereof) for the full amount of Taxes and Other Taxes with respect to Borrower Payments paid to such party and any liability (including penalties, interest and expenses (including reasonable attorney's fees and expenses)) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted by the relevant Governmental Authority. A certificate setting forth and containing an explanation in reasonable detail of the manner in which such amount shall have been determined and the amount of such payment or liability prepared by the Administrative Agent, an Issuing Bank or a Lender, absent manifest error, shall be final, conclusive and binding for all purposes. Such indemnification shall be made within 30 days after the date the applicable party makes written demand therefor.

(d) Tax Refund. If the Administrative Agent, an Issuing Bank or a Lender (or Transferee) shall become aware that it is entitled to claim a refund from a Governmental Authority in respect of 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 2.16, it shall promptly notify the Borrower of the availability of such refund claim and shall, within 30 days after receipt of a request by the Borrower, make a claim to such Governmental Authority for such refund at the Borrower's expense. If such party receives a refund (including pursuant to a claim for refund made pursuant to the preceding sentence) in respect of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower had paid additional amounts pursuant to this Section 2.16, it shall within 30 days from the date of such receipt pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.16 with respect to the Taxes or Other Taxes giving rise to such refund), net of all of its reasonable out-of-pocket expenses and without interest (other than interest paid by the relevant

Governmental Authority with respect to such refund); provided, however, that the Borrower, upon the request of such party, agrees to repay the amount paid over to the Borrower (plus penalties, interest or other charges) under this Section 2.16(d) in the event the party is required to repay such refund to such Governmental Authority.

(e) Tax Receipts. As soon as practicable, but in any event within 30 days, after the date of any payment of Taxes or Other Taxes by the Borrower to the relevant Governmental Authority, the Borrower will deliver to the Administrative Agent, at its address referred to in Section 8.01, the original or a certified copy of a receipt issued by such Governmental Authority evidencing payment thereof.

(f) Survival. Without prejudice to the survival of any other agreement contained herein, the agreements and obligations contained in this Section 2.16 shall survive the payment in full of all Revolving Exposure and the termination of the Commitments hereunder.

(g) Tax Withholding Exemptions. Each Lender (or Transferee) that is organized under the laws of a jurisdiction other than the United States, any State thereof or the District of Columbia (a “**Non-U.S. Lender**”) shall deliver to the Borrower and the Administrative Agent two copies of the applicable United States Internal Revenue Service Form, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or reduced rate of, United States Federal withholding tax on payments by the Borrower under this Agreement. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of a Transferee that is a participation holder, on or before the date such participation holder becomes a Transferee hereunder) and on or before the date, if any, such Non-U.S. Lender changes its applicable lending office by designating a different lending office (a “**New Lending Office**”). In addition, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Notwithstanding any other provision of this Section 2.16(g), a Non-U.S. Lender shall not be required to deliver any form pursuant to this Section 2.16(g) that such Non-U.S. Lender is not legally able to deliver.

(h) Failure to Deliver Forms. The Borrower shall not be required to indemnify any Non-U.S. Lender (including any Transferee), or to pay any additional amounts to any Non-U.S. Lender (including any Transferee), in respect of federal, state, local or other governmental withholding tax pursuant to paragraph (a) or (c) above to the extent that (i) the obligation to withhold amounts with respect to federal, state, local or other governmental withholding tax existed on the date such Non-U.S. Lender became a party to this Agreement (or, in the case of a Transferee that is a participation holder, on the date such participation holder became a Transferee hereunder), or, with respect to payments to a New Lending Office, the date such Non-U.S. Lender designated such New Lending Office with respect to a Loan; provided, however, that this clause (h) shall not apply to any Transferee or New Lending Office that becomes a Transferee or New Lending Office as a result of an assignment, participation, transfer or designation made at the request of the Borrower; and provided further, however, that this clause (h) shall not apply to the extent the indemnity payment or additional amounts any Transferee, or Lender (or Transferee) through a New Lending Office, would be entitled to receive (without regard to this clause (h)) do not exceed the indemnity payment or additional amounts that the Person making the assignment, participation or transfer to such Transferee, or Lender (or Transferee) making the designation of such New Lending Office, would have been entitled to receive in the absence of such assignment, participation, transfer or designation or (ii) the obligation to pay such additional amounts or such indemnity payments would not have arisen but for a failure by such Non-U.S. Lender (including any Transferee) to comply with the provisions of paragraph (g) above and (i) below.

(i) Mitigation by Lenders. The Administrative Agent, any Issuing Bank or any Lender (or Transferee) claiming any indemnity payment or additional amounts payable pursuant to this Section 2.16 shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Borrower or to change the jurisdiction of its applicable lending office if

the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or additional amounts that may thereafter accrue and would not, in the good faith determination of the Administrative Agent, such Issuing Bank or such Lender (or Transferee), be otherwise disadvantageous to its interests.

(j) No Requirement to Deliver Tax Returns. Nothing contained in this Section 2.16 shall require the Administrative Agent, any Issuing Bank or any Lender (or Transferee) to make available to the Borrower any of its tax returns (or any other information) that it deems to be confidential or proprietary subject however to the provisions of Section 8.14.

Section 2.17. Intentionally Deleted.

Section 2.18. Payments by Administrative Agent to the Lenders. Any payment received by the Administrative Agent hereunder or under any other Loan Document for the account of a Lender or an Issuing Bank shall be paid to such party by 3:00 p.m. Dallas, Texas time on (a) the Business Day the payment is received in immediately available funds, if such payment is received by 10:00 a.m. Dallas, Texas time and (b) if such payment is received after 10:00 a.m. Dallas, Texas time, on the next Business Day.

Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any Issuing Bank 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 Lenders or such Issuing Bank, 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 Lenders or Issuing Banks, 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 Issuing Bank, 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 or any Issuing Bank with respect to any amount owing under this subsection shall be conclusive, absent manifest error.

Section 2.19. Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account or for the account of any Subsidiary and for its or a Subsidiary's benefit, payable in Dollars (or if then approved by an Issuing Bank, in another Available Currency) in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time on any Business Day and from time to time on and after the date hereof until the earlier of the Letter of Credit Expiration Date or the termination of the Commitments hereunder. If the Borrower requests Bank of America to issue a Letter of Credit, Bank of America agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.19, to issue the Letter of Credit subject to the terms and conditions of this Agreement (including without limitation those contained in this Section 2.19 below and those contained in Section 4.01) and provided that (i) the terms and provisions of such Letter of Credit are reasonably satisfactory to Bank of America and otherwise comply with the terms hereof, (ii) such Letter of Credit supports a transaction reasonably acceptable to Bank of America and (iii) such Letter of Credit is issued pursuant to such documentation as Bank of America may reasonably require. The Borrower may request any Issuing Bank to issue a Letter of Credit; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the total Revolving Exposures of all

Revolving Lenders shall not exceed the Total Commitment, and (y) the Revolving Exposure of a Revolving Lender shall not exceed such Revolving Lender's Commitment. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Effective Date shall be subject to and governed by the terms and conditions hereof.

(ii) No Issuing Bank shall issue any Letter of Credit if the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(iii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank (x) shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular, (y) shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or (z) shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, provided that, in the cases of clauses (y) and (z), such Issuing Bank shall have provided written notice to Borrower of its refusal to issue any Letter of Credit and the specific reasons therefor and Borrower shall not have compensated such Issuing Bank for the imposition of such restriction, reserve or capital requirement or reimbursed such Issuing Bank for such loss, cost or expense, as applicable;

(B) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank which are of general application;

(C) except as otherwise agreed by the Administrative Agent and such Issuing Bank, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(D) such Issuing Bank does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency;

(E) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(F) a default of any Lender's obligations to fund under Section 2.01 or Section 2.02 exists or any Lender is at such time a Defaulting Lender hereunder, unless the Administrative Agent has entered into satisfactory arrangements with the Borrower or such Lender to eliminate the risk with respect to such Lender.

(iv) No Issuing Bank shall amend any Letter of Credit if the Issuing Bank would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) No Issuing Bank shall be under any obligation to amend any Letter of Credit if (A) the Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable Issuing Bank and the Administrative Agent in the form of a Letter of Credit Application, appropriately completed and signed by a Senior Financial Officer of the Borrower. Such Letter of Credit Application must be received by the applicable Issuing Bank and the Administrative Agent not later than 10:00 a.m. (Dallas, Texas time) at least two Business Days (or such later date and time as the Administrative Agent and the applicable Issuing Bank may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable Issuing Bank and the Administrative Agent: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the applicable Issuing Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable Issuing Bank: (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as such Issuing Bank may require. Additionally, the Borrower shall furnish to the applicable Issuing Bank and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such Issuing Bank or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such Issuing Bank will provide the Administrative Agent with a copy thereof. Unless the Issuing Bank has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article 4 shall not then be satisfied, then, subject to the terms and conditions hereof, such Issuing Bank may, on the requested date, issue a Letter of Credit for the account of the Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with such Issuing Bank's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, and without any further action on the part of the applicable Issuing Bank or the Lenders, the applicable Issuing Bank grants to each Revolving Lender, and each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the aggregate amount available to be drawn under such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Bank may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “**Auto-Extension Letter of Credit**”); provided that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “**Non-Extension Notice Date**”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by such Issuing Bank, the Borrower shall not be required to make a specific request to such Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) such Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the applicable Issuing Bank shall not permit any such extension if (A) such Issuing Bank has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.19(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Article 4 is not then satisfied, and in each such case directing the Issuing Bank not to permit such extension.

(iv) If the Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Bank may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “**Auto-Reinstatement Letter of Credit**”). Unless otherwise directed by the applicable Issuing Bank, the Borrower shall not be required to make a specific request to such Issuing Bank to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Lenders shall be deemed to have authorized (but may not require) such Issuing Bank to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits such Issuing Bank to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “**Non-Reinstatement Deadline**”), the Issuing Bank shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Reinstatement Deadline from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Article 4 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the Issuing Bank not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable Issuing Bank shall notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse such Issuing Bank in such Alternative Currency, unless (A) such Issuing Bank (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the

absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified such Issuing Bank promptly following receipt of the notice of drawing that the Borrower will reimburse such Issuing Bank in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, such Issuing Bank shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. (Dallas, Texas time) on the date of any payment by such Issuing Bank under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by such Issuing Bank under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an “**Honor Date**”), the Borrower shall reimburse such Issuing Bank through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency if Borrower has received such notice prior to 9:00 a.m. (Dallas, Texas time) on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m. (Dallas, Texas time) on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 9:00 a.m. (Dallas, Texas time) on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt. If the Borrower fails to so reimburse such Issuing Bank by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the “**Unreimbursed Amount**”), and the amount of such Lender’s Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.01 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Total Commitment and the conditions set forth in Section 4.01 (other than the delivery of a Borrowing Request). Any notice given by the applicable Issuing Bank or the Administrative Agent pursuant to this Section 2.19(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.19(c)(i), make funds available to the Administrative Agent for the account of the applicable Issuing Bank, in Dollars, at the Administrative Agent’s office for Dollar-denominated payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. (Dallas, Texas time) on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.19(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable Issuing Bank in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans because the conditions set forth in Section 4.01 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable Issuing Bank an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the default rate pursuant to Section 2.07. In such event, each Lender’s payment to the Administrative Agent for the account of the Issuing Bank pursuant to Section 2.19(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.19.

(iv) Until each Lender funds its Loan or L/C Advance pursuant to this Section 2.19(c) to reimburse the applicable Issuing Bank for any amount drawn under any Letter of Credit,

interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of such Issuing Bank.

(v) Each Lender's obligation to make Loans or L/C Advances to reimburse the applicable Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.19(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such Issuing Bank, the Borrower, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Loans pursuant to this Section 2.19(c) is subject to the conditions set forth in Section 4.01 (other than delivery by the Borrower of a Borrowing Request). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the applicable Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.19(c) by the time specified in Section 2.19(c)(ii), such Issuing Bank shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of such Issuing Bank submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the applicable Issuing Bank has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.19(c), if the Administrative Agent receives for the account of such Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in Dollars and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable Issuing Bank pursuant to Section 2.19(c)(i) is required to be returned under any of the circumstances described in Section 8.20 (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Lender shall pay to the Administrative Agent for the account of such Issuing Bank its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of all obligations hereunder and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the applicable Issuing Bank for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), such Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the applicable Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under the Bankruptcy Code of the United States or any 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;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Available Currency to the Borrower or any Subsidiary or in the relevant currency markets generally; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the applicable Issuing Bank. The Borrower shall be conclusively deemed to have waived any such claim against the Issuing Bank and its correspondents unless such notice is given within five (5) Business Days after Borrower's receipt of a copy of such Letter of Credit or amendment thereto by Borrower.

(f) Role of each Issuing Bank. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the applicable Issuing Bank, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Bank shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes

all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the applicable Issuing Bank, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Bank shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.19(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against such Issuing Bank, and such Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such Issuing Bank's willful misconduct or gross negligence or such Issuing Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, such Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral. (i) Upon the request of the Administrative Agent, (A) if the Issuing Bank has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (B) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations.

(ii) The Administrative Agent may, at any time and from time to time after the initial deposit of Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations, and Administrative Agent shall, upon request, provide Borrower with calculations showing such exchange rate fluctuations.

(iii) Article 6 sets forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03 and Article 6, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the applicable Issuing Bank and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and such Issuing Bank (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of such Issuing Bank and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the Issuing Bank and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance, shall apply to each commercial Letter of Credit.

(i) Conflict with Issuer Documents. 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 Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(j) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

Section 2.20. Increase of Commitments. By written notice sent to the Administrative Agent (which the Administrative Agent shall promptly distribute to the Lenders), the Borrower may request an increase of the Total Commitment: (i) by an aggregate amount equal to any integral multiple of \$5,000,000 and not less than \$10,000,000 and (ii) by an aggregate amount not to exceed \$50,000,000; provided that (i) no Default or Event of Default shall have occurred and be continuing, (ii) the Total Commitment shall not have been reduced, nor shall the Borrower have given notice of any such reduction under Section 2.09(b), and (iii) the Total Commitment shall not previously have been increased pursuant to this Section 2.20 more than three (3) times. If one or more of the Lenders is not increasing its Commitment, then, with notice to the Administrative Agent and the other Lenders, another one or more financial institutions, each as approved by the Borrower and the Administrative Agent (a "**New Lender**"), may commit to provide an amount equal to the aggregate amount of the requested increase that will not be provided by the existing Lenders; provided, that the Commitment of each New Lender shall be at least \$5,000,000 and the maximum number of New Lenders shall be three (3). Upon receipt of notice from the Administrative Agent to the Lenders and the Borrower that the Lenders, or sufficient Lenders and New Lenders, have agreed to commit to an aggregate amount equal to the amount of the requested increase (the "**Increase Amount**") (or such lesser amount as the Borrower shall agree, which shall be at least \$10,000,000 and an integral multiple of \$5,000,000 in excess thereof), then: provided that no Default or Event of Default exists at such time or after giving effect to the requested increase, the Borrower, the Administrative Agent and the Lenders willing to increase their respective Commitments and the New Lenders (if any) shall execute and deliver an Increased Commitment Supplement (herein so called) in the form attached hereto as **Exhibit G**. If all existing Lenders shall not have provided their pro rata portion of the requested Increase Amount, the Loans will not be held pro rata by the Lenders in accordance with the Applicable Percentages determined hereunder. To remedy the foregoing, on the date of the effectiveness of the Increased Commitment Supplement, the Revolving Lenders shall make advances among themselves so that after giving effect thereto the Revolving Loans will be held by the Revolving Lenders, pro rata in accordance with the Applicable Percentages hereunder. The advances so made by each Lender whose Applicable Percentage has increased as a result of the changes to the Total Commitment shall be deemed to be a purchase of a corresponding amount of the Loans of the Revolving Lender or Lenders whose Applicable Percentages have decreased. The advances made under this Section 2.20 shall be Base Rate Loans made under each Revolving Lender's Commitment. All advances made under this Section 2.20 shall be made through the Administrative Agent.

Section 2.21. Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 8.05(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 8.05(c) 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, to purchase its participation or to make its payment under Section 8.05(c).

ARTICLE 3.

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to each of the Lenders and Issuing Banks as follows:

Section 3.01. Organization; Powers. Borrower and each Material Subsidiary (a) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in every jurisdiction where such qualification is required, except where the failure so to qualify would not result in a Material Adverse Effect, and (d) has the corporate power and authority to execute, deliver and perform its obligations under this Agreement and to borrow hereunder.

Section 3.02. Authorization. The execution, delivery and performance by the Borrower of the Loan Documents to which it is a party, the Borrowings hereunder, the pledge of the stock of certain Subsidiaries under the Pledge Agreement, the issuance of Letters of Credit hereunder and the other transactions contemplated by the Loan Documents (collectively, the "Transactions"): (a) have been duly authorized by all requisite corporate action and (b) will not (i) violate (A) any provision of any law, statute, rule or regulation to which any Obligated Party is subject or of the certificate of incorporation or other constituent documents or by-laws of the Borrower or any of its Subsidiaries, (B) any order of any Governmental Authority or (C) any provision of any Material indenture, agreement or other instrument to which the Borrower or any of its Subsidiaries is a party or by which it or any of its property is or may be bound (including the Senior Note Purchase Agreements and the Indebtedness limitations set forth in any Senior Note Purchase Agreement), (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under any such Material indenture, agreement or other instrument or (iii) result in the creation or imposition of any Lien upon any property or assets of the Borrower or any of its Subsidiaries, except as contemplated by the Pledge Agreement.

Section 3.03. Enforceability. This Agreement constitutes a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 3.04. Governmental or Third Party Approvals. No action, consent or approval of, registration or filing with or other action by any Governmental Authority or third party is or will be required in connection with the Transactions, to the extent they relate to the Borrower.

Section 3.05. Organization and Ownership of Shares of Subsidiaries.

(a) Schedule 3.05 is (except as noted therein) a complete and correct list of the Borrower's Subsidiaries as of July 8, 2005 showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, the percentage of Equity Interests in it owned by the Borrower and each other Subsidiary, and specifying whether such Subsidiary is a Material Subsidiary. Schedule 3.05A correctly sets forth the authorized, issued, and outstanding Equity Interests in each Material Subsidiary. All of the outstanding Equity Interests of each Material Subsidiary have been validly issued, are fully paid, and are nonassessable. There are no outstanding subscriptions, options, warrants, calls, or rights (including preemptive rights) to acquire, and no outstanding securities or instruments convertible into, any Equity Interest of any Material Subsidiary.

(b) Each Subsidiary identified in Schedule 3.05 is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under

lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

Section 3.06. Financial Statements. The audited consolidated financial statements of the Borrower and its Subsidiaries dated as of December 31, 2004 fairly present in all material respects the consolidated financial position of the Borrower and its Subsidiaries, as of the date of such financial statements and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). Since December 31, 2004 there has been no change in the financial condition, operations, business, properties or prospects of the Borrower or any of its Subsidiaries except changes that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect. As of the date hereof, there is no fact known to the Borrower that could reasonably be expected to have a Material Adverse Effect, except as disclosed in the audited consolidated financial statements of the Borrower and its Subsidiaries dated as of December 31, 2004 or the most recently delivered financial statements delivered in accordance with Section 5.18, or except as previously disclosed to the Administrative Agent in writing.

Section 3.07. Litigation; Observance of Statutes and Orders.

(a) Except as described on Schedule 3.07 attached hereto, there are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any Subsidiary or any property of the Borrower or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) Except as described on Schedule 3.07 attached hereto, neither the Borrower nor any Subsidiary is in default under any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 3.08. Taxes. The Borrower and its Subsidiaries have filed all income tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Borrower or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP.

Section 3.09. Title to Property; Leases. The Borrower and its Subsidiaries have good and sufficient title to their respective Material properties, including all such Material properties reflected in the audited consolidated financial statements of the Borrower and its Subsidiaries dated as of December 31, 2004 or purported to have been acquired by the Borrower or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement, except for those defects in title and Liens that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. All Material leases are valid and subsisting and are in full force and effect in all material respects.

Section 3.10. Licenses, Permits, etc. The Borrower and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights

thereto, that are Material, without known conflict with the rights of others, except for those conflicts that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.11. Compliance with ERISA.

(a) The Borrower and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3(3) of ERISA), and no event, transaction or condition has occurred or exists that would reasonably be expected to result in the incurrence of any such liability by the Borrower or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Borrower or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be, individually or in the aggregate, Material.

(b) As of the Effective Date, the present value of the accumulated benefit obligations under each of the Plans that are subject to Title IV of ERISA (other than Multiemployer Plans), determined in accordance with Financial Accounting Standards Board Statement No. 87 as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities by more than \$25,000,000 in the case of any single Plan and by more than \$50,000,000 in the aggregate for all Plans.

(c) The Borrower and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under Section 4201 or 4204 of ERISA in respect of Multiemployer Plans that, individually or in the aggregate, are Material.

(d) The expected post-retirement benefit obligation (determined as of the last day of the Borrower's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by Section 4980B of the Code) of the Borrower and its Subsidiaries was approximately \$14,235,000 as of December 31, 2004.

Section 3.12. Use of Proceeds. The Borrower will apply the proceeds of the Loans to refinance existing indebtedness, for capital expenditures, to make acquisitions, for working capital and for other general corporate purposes. The Letters of Credit shall be issued to support transactions of the Borrower and the Subsidiaries entered into in the ordinary course of business.

Section 3.13. Existing Indebtedness. Neither the Borrower nor any Subsidiary is in default, and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Borrower or such Subsidiary the outstanding principal amount of which exceeds \$10,000,000 in the aggregate, and, to the knowledge of the Responsible Officers of the Borrower, no event or condition exists with respect to any Indebtedness of the Borrower or any Subsidiary the outstanding principal amount of which exceeds \$10,000,000 in the aggregate that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to declare a default or event of default or cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

Section 3.14. Foreign Assets Control Regulations, etc. The use of the proceeds of the Loans will not violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the

United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

Section 3.15. Margin Regulations; Investment Company Act; Public Utility Holding Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board), or extending credit for the purpose of purchasing or carrying margin stock. 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 (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) will be margin stock.

(b) Neither the Borrower nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, or the Public Utility Holding Company Act of 1935, as amended.

Section 3.16. No Material Misstatements. No report, financial statement or other information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender pursuant to or in connection with this Agreement contains any material misstatement of fact or omits any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3.17. Environmental Compliance. The Borrower and its Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, except as described on Schedule 3.17.

Section 3.18. Insurance. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies, in such amounts (after giving effect to any self-insurance (if adequate reserves are maintained with respect thereto) compatible with the following standards), with such deductibles and covering such casualties and contingencies as are customarily carried by companies of established reputations engaged in the same or similar business and similarly situated.

Section 3.19. Solvency. The Borrower both individually and on a consolidated basis with its Subsidiaries: (i) owns and will own assets the fair saleable value of which are (A) greater than the total amount of its liabilities (including contingent liabilities) and (B) greater than the amount that will be required to pay probable liabilities of then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (ii) has capital that is not unreasonably small in relation to its business as presently conducted; and (iii) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

Section 3.20. Perfected Security Interest. The Pledge Agreement creates a valid and enforceable lien and security interest in the collateral covered thereby and Collateral Agent, upon taking possession of the stock certificates to be delivered to Collateral Agent pursuant to the Pledge Agreement (with stock powers executed in blank) will have a perfected, first-lien priority security interest in such Equity Interests evidenced by such stock certificates.

Section 3.21. Senior Debt. The Loans, the interest thereon, and the L/C Obligations are "Senior Indebtedness" under the terms of the Subordinated Notes.

ARTICLE 4.

CONDITIONS OF LENDING

Section 4.01. All Borrowings. The obligations of the Lenders to make the Loans on or after the Effective Date and the agreement of an Issuing Bank to issue, amend, renew or extend Letters of Credit are subject to the satisfaction of the following conditions on the date of each Borrowing, or issuance, amendment or other modification:

(a) The Administrative Agent shall have received a notice of such Borrowing, issuance, amendment or other modification as required by Section 2.03 or 2.19(a), as applicable.

(b) The representations and warranties set forth in Article 3 shall be true and correct in all material respects on and as of the date of such Borrowing, issuance, amendment or other modification with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(c) At the time of and immediately after such Borrowing, issuance, amendment or other modification, no Event of Default or Default shall have occurred and be continuing or would result from such Borrowing.

(d) At the time of and immediately after such Borrowing, issuance, amendment or other modification, the aggregate Revolving Exposures of all Lenders shall not exceed the Total Commitment, the Dollar Equivalent of the aggregate principal amount of all outstanding Australian Dollar Loans shall not exceed \$25,000,000 and the Dollar Equivalent of the aggregate principal amount of all outstanding Euro Loans shall not exceed \$25,000,000.

Each Borrowing and each issuance, amendment or other modification of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date of such Borrowing, issuance, amendment or other modification as to the matters specified in paragraphs (b), (c) and (d) of this Section 4.01.

Section 4.02. Effective Date. The effectiveness of the amendment and restatement of the Prior Credit Agreement as contemplated hereby and the effectiveness of the obligations of the Lenders to make Loans hereunder on the Effective Date and the agreement of an Issuing Bank to issue, amend, renew or extend Letters of Credit are subject to the following conditions being satisfied on or before the date hereof, and such obligations shall not be effective until the date that each such condition is satisfied (the "Effective Date"):

(a) The Administrative Agent shall have received the favorable written opinion of counsel to the Borrower to the effect set forth in Exhibit C hereto dated the Effective Date and addressed to the Lenders and satisfactory to the Lenders and to Bracewell & Giuliani LLP, counsel for the Administrative Agent (and the Borrower hereby instructs its counsel to deliver such opinion to the Administrative Agent for the benefit of the Lenders).

(b) The Administrative Agent shall have received all of the following in form and substance satisfactory to the Administrative Agent and each of the Lenders: (i) a certificate as to the existence and good standing of each Obligated Party issued by the Secretary of State or other applicable Governmental Authority of its jurisdiction of incorporation or organization as of a recent date; (ii) a certificate of the Secretary or an Assistant Secretary or other authorized officer of each Obligated Party dated the Effective Date and certifying (A) that attached thereto is a true and complete copy (or identifying a previously delivered copy) of its by-laws or other similar internal governing document as in effect on the Effective Date and at all times since the date of the resolutions described in clause (B) below, (B) with respect to each Obligated Party, that

attached thereto is a true and complete copy of its resolutions or similar evidence of authority, duly adopted by its board of directors (or similar governing authority) authorizing its execution, delivery and performance of the Loan Documents to which it is a party and the Transactions, and that such resolutions or similar evidence of authority have not been modified, rescinded or amended and are in full force and effect, (C) that attached thereto is a true and complete copy (or identifying a previously delivered copy) of the certificate of incorporation or other similar internal governing document, as in effect as of the Effective Date, of each Obligated Party, and (D) as to the incumbency and specimen signature of each of its representatives executing any Loan Document on its behalf; (iii) a certificate of another of its representatives as to the incumbency and specimen signature of the Secretary, Assistant Secretary or other authorized officer executing the certificate pursuant to clause (ii), above; and (iv) such other documentation as the Lenders or the Administrative Agent shall reasonably request.

(c) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by a Senior Financial Officer of the Borrower, confirming compliance with the conditions precedent set forth in paragraphs (b), (c) and (d) of Section 4.01.

(d) The Administrative Agent shall have received (i) a pay-off letter from JPMorgan Chase Bank, N.A. for all sums due under the Prior Credit Agreement, in form and substance satisfactory to the Administrative Agent, and (ii) all Fees and other amounts due and payable on or prior to the Effective Date.

(e) The Administrative Agent shall have received: (i) the Subsidiary Guaranty in the form attached hereto as **Exhibit D** executed by all the Guarantors; (ii) the Intercreditor Agreement in the form attached hereto as **Exhibit F** signed on behalf of all the Obligated Parties and the Noteholders (as defined therein); (iii) the Pledge Agreement in the form attached as an exhibit to the Intercreditor Agreement signed on behalf of the Borrower, Lennox Global Ltd. and the Collateral Agent; (iv) the certificates identified under the Pledge Agreement, in each case accompanied by undated stock powers executed in blank or evidence that arrangements satisfactory to the Administrative Agent shall have been made for the delivery of such certificates and stock powers; (v) promissory notes payable to each Lender requesting a promissory note in form and substance satisfactory to the Administrative Agent executed by the Borrower; and (vi) such other documentation or evidence as the Administrative Agent shall have requested in order to create, perfect or protect the security interests and liens created pursuant to the Pledge Agreement under the laws of the United States of America and the applicable laws of Canada.

(f) The Administrative Agent shall have received evidence that all Persons who have the benefit of the provisions similar or substantially similar to the terms of Section 5.06 of the Prior Credit Agreement (including the holders of the notes under the Senior Note Purchase Agreements) shall have consented to the terms of this Agreement and waived any default arising as a result of the execution and delivery of this Agreement and such provisions.

(g) The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent, all environmental reports and such other reports, audits or certificates as it may reasonably request.

Without limiting the generality of the provisions of Section 7.04, for purposes of determining compliance with the conditions specified in this Section 4.02, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the closing date specifying its objection thereto.

ARTICLE 5.

AFFIRMATIVE AND NEGATIVE COVENANTS

The Borrower covenants and agrees that, so long as any Lender has any Commitment hereunder or any obligations to acquire or fund any participation in any Swingline Loan or Letter of Credit or the Swingline Lender is obligated to make Swingline Loans or Bank of America is obligated to issue Letters of Credit hereunder or any amount payable hereunder remains unpaid:

Section 5.01. Compliance with Laws. The Borrower will and will cause each of its Subsidiaries to (i) comply in all material respects with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and (ii) obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. Insurance. The Borrower will and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

Section 5.03. Maintenance of Properties and Lines of Business. The Borrower will and will cause each of its Subsidiaries to maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times; provided that this Section shall not prevent the Borrower or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Borrower has concluded that such discontinuance would not result in a Default or an Event of Default (as a result of a violation of Section 5.11 or otherwise) and would not, individually or in the aggregate, have a Material Adverse Effect. The Borrower will not and will not permit any of its Subsidiaries to engage in any line of business other than such lines of business in which it is presently engaged and those businesses reasonably related thereto.

Section 5.04. Payment of Taxes. The Borrower will and will cause each of its Subsidiaries to file all income tax or similar tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies payable by any of them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, provided that neither the Borrower nor any Subsidiary need pay any such tax or assessment if the amount, applicability or validity thereof is contested by the Borrower or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Borrower or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Borrower or such Subsidiary.

Section 5.05. Corporate Existence, etc. The Borrower will at all times preserve and keep in full force and effect its corporate existence. Subject to Sections 5.10 and 5.11, the Borrower will at all times preserve and keep in full force and effect each of its Subsidiaries' corporate existence and all rights and franchises of the Borrower and its Subsidiaries necessary for the conduct of their respective businesses, except to the extent that failure to do so with respect to a Subsidiary which is not a Material Subsidiary could not reasonably be expected to have a Material Adverse Effect.

Section 5.06. Intentionally Deleted.

Section 5.07. Covenant to Guarantee and Secure Loans Equally.

(a) If any Subsidiary of the Borrower shall guarantee the obligations of the Borrower under the Senior Note Purchase Agreements or any other agreement creating or evidencing Indebtedness of the Borrower, the Borrower shall cause to be made effective provision whereby the Loans and other obligations of the Borrower under the Loan Documents will be guaranteed equally and ratably with any and all other obligations thereby guaranteed, with the documentation for such guarantee to be reasonably satisfactory to the Required Lenders. Any violation of Section 5.12 will constitute an Event of Default, whether or not provision is made for an equal and ratable guarantee pursuant to this Section 5.07.

(b) If the Borrower shall create, assume or permit to exist any Lien upon any of its property or assets, or permit any Subsidiary to create, assume or permit to exist any Lien upon any of its property or assets, whether now owned or hereafter acquired, other than those Liens permitted by the provisions of Section 5.13, the Borrower shall make or cause to be made effective provision whereby the Loans and other obligations under the Loan Documents will be secured equally and ratably with any and all other obligations thereby secured, with the documentation for such security to be reasonably satisfactory to the Required Lenders and, in any such case, the Loans and such other obligations shall have the benefit, to the fullest extent that, and with such priority as, the holders thereof may be entitled under applicable law, of an equitable Lien on such property. Any violation of Section 5.13 will constitute an Event of Default, whether or not provision is made for an equal and ratable Lien pursuant to this Section 5.07.

Section 5.08. Environmental Matters.

(a) The Borrower will and will cause each of its Subsidiaries to comply in all material respects with all applicable Environmental Laws if, individually or in the aggregate, failure to comply therewith could reasonably be expected to have a material adverse effect on the financial condition or results of operations of the Borrower or the Borrower and its Subsidiaries, taken as a whole.

(b) The Borrower will not and will not permit any of its Subsidiaries to cause or allow any Hazardous Substance to be present at any time on, in, under or above any real property or any part thereof in which the Borrower or any Subsidiary has a direct interest (including ownership thereof or any arrangement for the lease, rental or other use thereof, or the retention of any mortgage or security interest therein or thereon), except in a manner and to an extent that is in compliance in all material respects with all applicable Environmental Laws or that could not reasonably be expected to have a material adverse effect on the financial condition or results of operations of the Borrower or the Borrower and its Subsidiaries, taken as a whole.

Section 5.09. Transactions with Affiliates. The Borrower will not permit any Subsidiary to enter into directly or indirectly any Material transaction or Material group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Borrower or another Subsidiary), except pursuant to the reasonable requirements of the Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

Section 5.10. Merger, Consolidation, etc. The Borrower will not, and will not permit any Subsidiary to, consolidate with or merge with or into any other Person or permit any other Person to merge or consolidate with it or convey, transfer or lease substantially all of its assets in a single transaction or series of related transactions to any Person or dissolve or liquidate; except that if, at the time thereof and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing: (i) a Domestic Subsidiary may merge into the Borrower or another Domestic Subsidiary that is Wholly-Owned; provided that in any such merger transaction involving the Borrower, the Borrower shall be the surviving

Person; (ii) any Foreign Subsidiary may merge into another Foreign Subsidiary that is Wholly-Owned (other than the Insurance Subsidiary); (iii) Borrower may merge with another Person in an acquisition permitted by Section 5.23 if the Borrower is the surviving Person; (iv) any Subsidiary may merge with another Person in an acquisition permitted by Section 5.23 if such Subsidiary is the surviving Person or if the surviving Person becomes a Subsidiary and the Borrower or such Person complies with the obligations hereunder applicable to new Material Subsidiaries to the extent applicable to such surviving Person; (v) the Borrower and any Subsidiary may make Transfers permitted by Section 5.11; and (vi) any Subsidiary who has transferred all of its assets in a transaction permitted by Section 5.11 may thereafter dissolve or liquidate; provided, that in the case of any of the transactions described in the foregoing clauses (i) through (vi) which would involve or result in a Change of Control, the Borrower shall have complied with Section 2.10.

Section 5.11. Sale of Assets, etc. The Borrower will not, and will not permit any of its Subsidiaries to, make any Transfer except:

(a) Transfers of either (i) inventory held for sale, or (ii) equipment, fixtures, supplies or materials no longer required in the operation of the business of the Borrower or such Subsidiary or that is obsolete, and, in the case of any Transfer described in clause (i) or (ii), such Transfer is in the ordinary course of business; and

(b) Transfers (i) by any Domestic Subsidiary to the Borrower or another Domestic Subsidiary that is Wholly-Owned, (ii) by a Foreign Subsidiary to the Borrower or another Subsidiary that is Wholly-Owned, and (iii) by the Borrower to a Material Subsidiary that is a Domestic Subsidiary and Wholly-Owned; and

(c) Transfers that constitute either: (i) the sale of receivables, or undivided interests therein, together with all collections and other proceeds thereof and any collateral securing the payment thereof, pursuant to a Receivable Securitization permitted by Section 5.26, or (ii) the sale of all or a portion of any business segment other than the domestic heating (with the exception of the hearth products division and the advanced distributor products division) and cooling manufacturing segment and the domestic refrigeration segment; provided, in the case of this clause (ii), that (A) the aggregate book value of all business segments or portions thereof Transferred in reliance on this clause (ii) in any calendar year shall not exceed 10% of the value of the consolidated assets of the Borrower and its Subsidiaries as of the last day of the immediately preceding calendar year and (B) all business segments or portions thereof Transferred in reliance on this clause (ii) in any calendar year, in the aggregate, shall not have contributed greater than 5% of EBITDA for the immediately preceding calendar year; provided, further, in the case of each of the foregoing clauses (i) and (ii), that at the time of such Transfer, no Default or Event of Default shall exist or would result from such Transfer; and

(d) Transfers not otherwise permitted under this Section 5.11; provided that (i) at the time of such Transfer, no Default shall exist or would result from such Transfer, (ii) the aggregate book value of all property Transferred in reliance on this clause (d) in any calendar year shall not exceed 5% of the value of the consolidated assets of the Borrower and its Subsidiaries as of the last day of the immediately preceding calendar year, and (iii) all property Transferred in reliance on this clause (d) in any calendar year, in the aggregate, shall not have contributed greater than 5% of EBITDA for the immediately preceding calendar year.

Section 5.12. Indebtedness. The Borrower will not, and will not permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee, or otherwise become directly or indirectly liable with respect to any Indebtedness except the following, provided that in each of the following cases, both prior to and immediately after giving effect to the creation, incurrence, assumption, or guarantee thereof or the Company's or such Subsidiary's otherwise becoming directly or indirectly liable with respect thereto, no Default or Event of Default shall exist:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness relating to the Senior Note Purchase Agreements and the Subordinated Notes and extensions, renewals, refinancings and replacements of any such Indebtedness that (i) do not increase the outstanding principal amount thereof or result in an earlier maturity date or decreased weighted average life thereof; and (ii) do not contain financial covenants and other terms that are more restrictive than those contained in this Agreement;

(c) Other Indebtedness existing on the date hereof and set forth in Schedule 5.12 and extensions, renewals, refinancings and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof or result in an earlier maturity date or decreased weighted average life thereof;

(d) Indebtedness of Domestic Subsidiaries owed to any other Domestic Subsidiary that is Wholly-Owned or the Borrower;

(e) Intentionally Deleted;

(f) Intentionally Deleted;

(g) Secured Indebtedness not otherwise permitted under this Section 5.12 of any Foreign Subsidiary; provided that the aggregate outstanding amount of all Indebtedness permitted under the provisions of this subclause (g) shall not at any time exceed \$50,000,000;

(h) Guarantees by the Borrower with respect to (i) Indebtedness related to Borrower's joint ventures, provided that the Dollar Equivalent of the aggregate amount so Guaranteed by the Borrower shall at no time exceed \$50,000,000, and (ii) Indebtedness of third parties other than Subsidiaries; provided that the Dollar Equivalent of the aggregate amount so Guaranteed by the Borrower shall at no time exceed \$15,000,000; and provided further that the Dollar Equivalent of the aggregate amount guaranteed under such Guarantees by the Borrower under the provisions of this subclause (h) shall at no time exceed \$50,000,000;

(i) Guarantees by the Borrower with respect to Indebtedness of any of its Wholly-Owned Subsidiaries, by any Domestic Subsidiary of Indebtedness of any other Domestic Subsidiary that is Wholly-Owned and by any Foreign Subsidiary of Indebtedness of any other Foreign Subsidiary that is Wholly-Owned;

(j) Indebtedness of the Borrower or any Subsidiary owing to the Insurance Subsidiary; provided that the aggregate outstanding amount of all such Indebtedness shall not at any time exceed (i) \$35,000,000 for the financing of the purchase of the Borrower's headquarters located at 2140 Lake Park Blvd. in Richardson, Texas, provided that in no event shall the total Indebtedness owing to the Insurance Subsidiary or any other Persons under this clause (j)(i) and clause (m) below exceed \$35,000,000, and (ii) \$50,000,000 for all other purposes including the financing of the Borrower's headquarters building located at 2100 Lake Park Blvd. in Richardson, Texas, provided that no portion of the \$50,000,000 shall be used for the potential financing of the purchase of the Borrower's headquarters located at 2140 Lake Park Blvd. in Richardson, Texas;

(k) Indebtedness arising in connection with Swap Agreements permitted by Section 5.25;

(l) Indebtedness of the Borrower in an amount not exceeding \$30,000,000 in the aggregate for the purchase of corporate airplanes;

(m) Indebtedness of the Borrower in an amount not exceeding \$35,000,000 in the aggregate for the purchase of Borrower's headquarters building at 2140 Lake Park Boulevard in Richardson,

Texas, which Indebtedness may be owing to the Insurance Subsidiary (as permitted by clause (j) above) or to another Person, but in no event shall the total Indebtedness owing to the Insurance Subsidiary or any other Persons under clause (j)(i) above or this clause (m) exceed \$35,000,000;

(n) unsecured Indebtedness of the Borrower or any Subsidiary for borrowed money (in addition to any of the other Indebtedness permitted by the other provisions of this Section 5.12) and any corresponding Guarantee thereof by any Subsidiary (other than the Insurance Subsidiary), provided,

(i) such Indebtedness is incurred in compliance with the other provisions hereof (including, the restrictions contained in Section 5.13 (Liens) and 5.16 (Limitation on Restrictive Agreements));

(ii) such Indebtedness is on terms no more restrictive than the terms contained in this Agreement; and

(iii) the Borrower provides evidence to the Administrative Agent that the Borrower is in compliance with the financial covenants set forth in Section 5.15 calculated on a pro forma basis prior to the incurrence of such Indebtedness but after giving effect thereto and, when calculated with respect to the financial covenants in Section 5.15(a) and (b), for the four fiscal quarters most recently ended and after giving effect to the incurrence of such Indebtedness as if such Indebtedness existed on the first day of the calculation period with an interest rate equal for the entire term of such period to the interest rate to be in existence on the date of the incurrence of such Indebtedness;

(o) Indebtedness of the Borrower or any Subsidiary incurred pursuant to private placement transactions in an aggregate amount not to exceed the Private Placement Basket, so long as (i) such Indebtedness is on terms that are no more restrictive than those contained in this Agreement (ii) such new noteholder executes and delivers a joinder agreement to the Intercreditor Agreement in the form attached thereto; and (iii) at the time of the incurrence of any such Indebtedness and immediately after giving pro forma effect thereto as if such Indebtedness had been incurred at the beginning of the most recently ended four full fiscal quarters for which financial statements have been delivered pursuant to Section 5.18 immediately preceding the date of such incurrence, Borrower is in compliance with Section 5.15;

(p) Indebtedness in respect of Capital Leases; provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$25,000,000; and

(q) Other unsecured indebtedness of the Borrower or any Subsidiary not otherwise permitted by this Section 5.12 not to exceed \$50,000,000.

Notwithstanding the foregoing, the Borrower will not permit the Insurance Subsidiary to directly or indirectly create, incur, assume, guarantee, or otherwise become directly or indirectly liable with respect to any Indebtedness except for liabilities arising in the ordinary course of business in connection with insurance and reinsurance policies it has entered into or may enter into in the ordinary course of business.

Section 5.13. Liens. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist (upon the happening of a contingency or otherwise) any Lien on or with respect to any property or asset (including, without limitation, any document or instrument in respect of goods or accounts receivable) of the Borrower or any such Subsidiary, whether now owned or held or hereafter acquired, or any income or profits therefrom, or assign or otherwise convey any right to receive income or profits, except:

(a) Liens for taxes, assessments or other governmental charges the payment of which is not at the time required by Section 5.04;

(b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and other similar Liens, in each case, incurred in the ordinary course of business for sums not yet due, and any such Liens which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(c) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business (i) in connection with workers' compensation, unemployment insurance and other types of social security or retirement benefits, or (ii) to secure (or to obtain letters of credit that secure) the performance of tenders, statutory obligations, surety bonds, appeal bonds, bids, leases (other than Capital Leases), performance bonds, purchase, construction or sales contracts and other similar obligations, in each case not incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property;

(d) Liens securing judgments for the payment of money that do not constitute an Event of Default under Article 6(i);

(e) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, in each case incidental to, and not interfering with, the ordinary conduct of the business of the Borrower or any of its Subsidiaries, provided that such Liens do not, in the aggregate, materially detract from the value of such property;

(f) Liens on property or assets of the Borrower (other than the Equity Interests of the Material Subsidiaries) or any of its Subsidiaries securing Indebtedness or other obligations owing to the Borrower or to a Wholly-Owned Subsidiary permitted by Section 5.12;

(g) (i) Liens contemplated by financing statements filed in respect of operating leases, (ii) Liens granted under Capital Leases in existence as of the Effective Date (iii) other Liens existing on the Effective Date and described on Schedule 5.13 and (iv) Liens granted to the Collateral Agent under the Pledge Agreement;

(h) Liens granted in connection with Receivable Securitizations permitted by Section 5.26 on the receivables sold pursuant thereto (together with all collections and other proceeds thereof and any collateral securing the payment thereof), all right title and interest in and to the lockboxes and other collection accounts in which proceeds of such receivables are deposited, the rights under the documents executed in connection with such Receivable Securitizations and in the Equity Interests issued by any special purpose entity organized to purchase the receivables thereunder;

(i) any Lien existing on any property prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and extensions, renewals, refinancings and replacements thereof that do not increase the outstanding principal amount thereof;

(j) any Lien renewing, extending or replacing any Lien permitted by Subsections (g) and (i) above, provided that (i) the principal amount of Indebtedness or other obligation secured by such Lien immediately prior to such extension, renewal or replacement is not increased or the maturity thereof reduced, (ii) such Lien is not extended to any other property, and (iii) immediately after such extension, renewal or replacement no Default or Event of Default would exist or would result therefrom; and

(k) purchase money Liens on corporate airplanes granted in connection with the purchase of such corporate airplanes pursuant to Section 5.12(l);

(l) (A) purchase money Liens granted in connection with Indebtedness permitted under Sections 5.12(m); (B) Liens granted on the assets of Foreign Subsidiaries in connection with Indebtedness permitted under Section 5.12(g); and (C) Liens granted in connection with Indebtedness permitted under Section 5.12(o), provided that (i) such Liens are *pari passu* with the Liens granted to the Collateral Agent or Administrative Agent for the benefit of the Lenders, (ii) the new lienholder(s) execute and deliver a joinder agreement to the Intercreditor Agreement in the form attached thereto, and (ii) no Liens shall be permitted in connection with Indebtedness permitted under Section 5.12(o) if the Collateral has been released pursuant to the terms of the Pledge Agreement.

(m) Liens securing Indebtedness permitted under Section 5.12(p); provided that such Liens do not at any time encumber any property other than the property financed by such Indebtedness; and

(n) other Liens not otherwise permitted by Subsections (a) through (m) above, provided that (i) the Dollar Equivalent of the fair market value of the assets subject to such other Liens shall not exceed \$10,000,000, (ii) such Liens secure Indebtedness of the Borrower or a Subsidiary permitted hereby, (iii) the Dollar Equivalent of the aggregate principal amount of the Indebtedness secured by all Liens granted under the permissions of this clause (n) does not exceed \$10,000,000 and (iv) immediately after giving effect to the creation thereof, no Default or Event of Default shall exist.

For purposes of this Section 5.13, any Person becoming a Subsidiary after the date of this Agreement shall be deemed to have incurred all of its then outstanding Liens at the time it becomes a Subsidiary, and any Person extending, renewing or replacing any Indebtedness secured by any Lien shall be deemed to have incurred such Lien at the time of such extension, renewal or replacing.

Section 5.14. Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or incur any liability to declare or make, any Restricted Payment, except: (a) Subsidiaries may declare and pay dividends ratably with respect to the Equity Interests they have issued and (b) the Borrower may declare and pay dividends and repurchase shares of its common stock during any fiscal quarter as long as on the date of determination:

(i) no Default or Event of Default exists or would result therefrom; and

(ii) the sum of (A) the amount of the dividends or repurchases proposed to be made in such fiscal quarter, plus (B) the aggregate amount of the dividends and repurchases previously made by Borrower in the same fiscal quarter, and (C) the aggregate amount of all dividends and repurchases made in the prior three fiscal quarters does not exceed an amount equal to the greater of (1) fifty percent (50%) of Consolidated Net Income (calculated for the four fiscal quarters then most recently ended prior to the date of determination) or (2) \$40,000,000.

Additionally, Borrower may repurchase its issued and outstanding stock in the event of the conversion of Subordinated Notes in an amount not to exceed fifty percent (50%) of the principal amount of the Subordinated Notes so converted.

Section 5.15. Financial Covenants. The Borrower will perform and observe the following financial covenants:

(a) Coverage Ratio. As of the end of each fiscal quarter, commencing with the fiscal quarter ending June 30, 2005, the Borrower shall not permit the ratio of Cash Flow for the four (4) fiscal quarters then ending to its Net Interest Expenses for such period to be less than 3.00 to 1.00. As used herein the following terms have the following meanings:

“Cash Flow” means, for any period, the total of the following for the Borrower and the Subsidiaries calculated on a consolidated basis without duplication for such period in accordance with GAAP: (A) EBITDA; minus (B) capital expenditures.

“Net Interest Expenses” means, for any period and any Person, the sum of the following calculated on a consolidated basis without duplication in accordance with GAAP: (a) Interest Expenses minus (b) total cash interest income.

(b) Consolidated Indebtedness to Adjusted EBITDA. As of the last day of each fiscal quarter, commencing with the fiscal quarter ending June 30, 2005, the Borrower shall not permit the Debt to Adjusted EBITDA Ratio to exceed 3.50 to 1.00.

(c) Consolidated Net Worth. The Borrower will not permit Consolidated Net Worth as of any date to be less than the sum of (i) \$396,624,000.00; plus (ii) 50% of the sum of (A) its aggregate Consolidated Net Income (but only if a positive number) for the period beginning April 1, 2005 and ending as of the most recently completed fiscal quarter prior to the date of determination minus (B) any non-recurring and non-cash charges not included in determining such Consolidated Net Income under clause (g) of the definition thereof; plus (iii) 100% of the net proceeds from issuance of any Equity Interests by Borrower occurring after the Effective Date (including, or in addition, any increase in equity attributable to the conversion of the Borrower’s Subordinated Notes to common stock).

Section 5.16. Limitation on Restrictive Agreements. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement 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 Equity Interests issued by it or to make or repay loans or advances to the Borrower or any other Subsidiary or to be obligated under a Guaranty with respect to Indebtedness of the Borrower or any other Subsidiary; provided that: (i) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document, the Senior Note Purchase Agreements or Subordinated Notes; (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 5.16 (but shall apply to any modification of any such restriction or condition expanding the scope thereof); (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, including any Indebtedness under a Receivable Securitization, if such restrictions or conditions apply only to the property or assets securing such Indebtedness; (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof; (vi) clause (b) of the foregoing shall not apply to customary provisions contained in agreements entered into in connection with Indebtedness owed by any Foreign Subsidiary that impose restrictions on the ability of the Foreign Subsidiary thereunder to declare, pay or set aside funds for the making of any Distribution in respect of the Equity Interests issued by such Foreign Subsidiary; and (vii) clause (b) of the

foregoing shall not apply to customary provisions contained in agreements entered into in connection with Receivable Securitizations permitted hereby that impose restrictions on the ability of the special purpose entity party thereto to declare, pay or set aside funds for the making of any Distribution in respect of the Equity Interests issued by such entity.

Section 5.17. Preferred Stock of Subsidiaries. The Borrower will not permit any Subsidiary to issue or permit to remain outstanding any Preferred Stock unless such Preferred Stock is issued to and at all times owned and held by the Borrower or a Wholly-Owned Subsidiary.

Section 5.18. Financial and Business Information. The Borrower will furnish to the Administrative Agent:

(a) Quarterly Statements. Within 45 days after the end of each quarterly fiscal period in each fiscal year of the Borrower (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of

(i) consolidated balance sheets of the Borrower and its Subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

all in reasonable detail and setting forth in comparative form the figures for the corresponding periods in the previous fiscal year, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the Borrower and its Subsidiaries and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of the Borrower's Quarterly Report on Form 10-Q prepared in compliance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 5.18(a).

(b) Annual Statements. Within 90 days after the end of each fiscal year of the Borrower, duplicate copies of:

(i) consolidated balance sheets of the Borrower and its Subsidiaries as at the end of such year, and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the Borrower and its Subsidiaries and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances; provided that the delivery within the time period specified above of the Borrower's Annual Report on Form 10-K for such fiscal year (together with the

Borrower's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of clauses (i) and (ii) of this Section 5.18(b); and

(iii) a certificate of such accountants stating that in making the examination for such report, they have obtained no knowledge of any Default or Event of Default, or, if they have obtained knowledge of any Default or Event of Default, specifying the nature and period of existence thereof and the action the Borrower has taken or proposes to take with respect thereto.

(c) SEC and Other Reports. If the Borrower or any Subsidiary shall be required to file reports with the Securities and Exchange Commission, promptly upon their becoming available, one copy of (i) each financial statement, report, notice or proxy statement sent by the Borrower or any Subsidiary to public securities holders generally, and (ii) each regular or periodic report, each registration statement that shall have become effective (without exhibits except as expressly requested by the Administrative Agent or such Lender), and each final prospectus and all amendments thereto filed by the Borrower or any Subsidiary with the Securities and Exchange Commission;

(d) Notice of Default or Event of Default. Promptly, and in any event within five days after a Responsible Officer becomes aware of the existence of any Default or Event of Default, a written notice specifying the nature and period of existence thereof and what action the Borrower is taking or proposes to take with respect thereto;

(e) ERISA Matters. Promptly, and in any event within five days, after a Responsible Officer becomes aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Borrower or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in Section 4043(b) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof and the potential cost to the Borrower or such ERISA Affiliate resulting therefrom exceeds \$500,000; or

(ii) the taking by the PBGC of steps to institute, or the threatening in writing by the PBGC of the institution of, proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Borrower or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to any Plan, or in the imposition of any Lien on any of the rights, properties or assets of the Borrower or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, would reasonably be expected to have a Material Adverse Effect.

(f) Requested Information. With reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Borrower or any of its Subsidiaries or relating to the ability of any Obligated Party to perform its obligations under the Loan Documents to which it is a party as from time to time may be reasonably requested by any Lender.

(g) Compliance Certificate. Each set of financial statements delivered pursuant to Section 5.18(a) or Section 5.18(b) hereof shall be accompanied by a certificate of a Senior Financial Officer setting forth:

(i) Covenant Compliance. The information (including detailed calculations) required in order to establish the Debt to Adjusted EBITDA Ratio, the Applicable Margin, the Facility Fee Percentage, the then existing Material Subsidiaries, and whether the Borrower was in compliance with the requirements of Section 5.15 hereof (including the calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such Section, and the calculation of the amount, ratio or percentage then in existence);

(ii) Event of Default. A statement that such officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Borrower and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists (including, without limitation, any such event or condition resulting from the failure of the Borrower or any Subsidiary to comply with any Environmental Law), specifying the nature and period of existence thereof and what action the Borrower shall have taken or proposes to take with respect thereto;

(iii) Management's Discussion and Analysis. A written discussion and analysis by management of the financial condition and results of operations of the lines of business conducted by the Borrower and its Subsidiaries for such accounting period; provided that delivery within the time period specified above of copies of, in the case of Section 5.18(a), the Borrower's Quarterly Report on Form 10-Q, or, in the case of Section 5.18(b), the Borrower's Annual Report on Form 10-K, in each case prepared in compliance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy this clause (iii); and

(iv) Litigation. A written statement that, to the best of such officer's knowledge after due inquiry, except as otherwise disclosed in writing to the Administrative Agent, there is no litigation (including derivative actions), arbitration proceeding or governmental proceeding or investigation (including but not limited to environmental matters) pending to which the Borrower or any Subsidiary is a party, or with respect to the Borrower or any Subsidiary or their respective properties, as to which there is a significant possibility of an adverse determination which, if determined adversely to the Borrower or any Subsidiary, would materially and adversely affect the business, operations, properties or condition of the Borrower or of the Borrower and its Subsidiaries taken as a whole.

(h) Debt Rating. Promptly upon receipt thereof, written notice of any downgrade in any rating of the Borrower's Indebtedness by Moody's, S&P or any other rating agency that issues ratings for the Borrower's Indebtedness.

(i) Other Information. Promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Subsidiary or regarding compliance with the terms of the Loan Documents as the Administrative Agent or any Lender may from time to time reasonably request, provided that the Borrower shall not be required to provide financial projections, a management letter, or consolidating financial statements more frequently than once per calendar year.

Documents required to be delivered pursuant to Section 5.18(a) or (b) or (c) (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 (i) on which the Borrower posts such documents,

or provides a link thereto on the Borrower's website on the Internet at the website address listed on **Schedule 8.01**; or (ii) on which 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 (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) 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. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by **Section 5.18(g)** to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Joint Lead Arrangers will make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) 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 or its securities) (each, a "**Public Lender**"). The Borrower hereby agrees that so long as Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information (as defined in **Section 8.15**), they shall be treated as set forth in **Section 8.15**); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, Borrower shall not be under any obligation to mark any Borrower Materials "PUBLIC."

Section 5.19. Inspection; Confidentiality. The Borrower shall permit the representatives of the Administrative Agent and each Lender:

(a) **No Default.** If no Default or Event of Default then exists, at the expense of the Administrative Agent or Lender and upon reasonable prior notice to the Borrower, to visit the principal executive office of the Borrower, to discuss the affairs, finances and accounts of the Borrower and its Subsidiaries with the Borrower's officers and (with the consent of the Borrower, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of the Borrower, which consent will not be unreasonably withheld) to visit the other offices and properties of the Borrower and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing;

(b) **Default.** If a Default or Event of Default then exists, at the expense of the Borrower to visit and inspect any of the offices or properties of the Borrower or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to

discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Borrower authorizes said accountants to discuss the affairs, finances and accounts of the Borrower and its Subsidiaries), all at such times and as often as may be requested; and

(c) Technical Data. Anything herein to the contrary notwithstanding, neither the Borrower nor any of its Subsidiaries shall have any obligations to disclose pursuant to this Agreement any engineering, scientific, or other technical data without significance to the analysis of the financial position of the Borrower and its Subsidiaries.

Section 5.20. Books and Records. The Borrower shall maintain its financial records in accordance with GAAP and all other business and operating records in accordance with reasonably prudent business practices.

Section 5.21. New Material Subsidiaries. Within forty-five (45) days after the end of each fiscal quarter, the Borrower shall:

(a) cause each Domestic Subsidiary that is a Material Subsidiary and was created or acquired during the fiscal quarter then ending, and each Domestic Subsidiary that became a Material Subsidiary during such fiscal quarter (any such Material Subsidiary, herein a “**New Material Domestic Subsidiary**”), to execute and deliver to the Administrative Agent a Subsidiary Joinder Agreement joining it as a guarantor under the Subsidiary Guaranty and such other documentation as the Administrative Agent may reasonably request to cause such New Material Domestic Subsidiary to evidence or otherwise implement the guaranty of the repayment of the obligations contemplated by the Subsidiary Guaranty and this Agreement; and

(b) take such action as the Collateral Agent may request to cause: (i) 100% of the Equity Interests issued by each New Material Domestic Subsidiary and (ii) 65% of the Equity Interests issued by each Foreign Subsidiary that is a Material Subsidiary and was created or acquired during the fiscal quarter then ending and each Foreign Subsidiary that, as a result of a change in assets, becomes a Material Subsidiary during such quarter, to be pledged to the Collateral Agent under the Pledge Agreement, including the proper completion, execution and delivery of a Pledge Amendment under the terms of the Pledge Agreement, the delivery of the certificates evidencing the Equity Interests to be pledged, along with undated stock powers executed in blank, Uniform Commercial Code Financing Statements, legal opinions and such other documentation as the Collateral Agent may reasonably request to cause such Equity Interests to be pledged under the Pledge Agreement and for such pledge to be perfected and protected; provided, however, the provisions of this Subsection (b) shall cease to exist upon either (i) the achievement by Borrower of a BBB- senior unsecured credit rating by S&P or a Baa3 senior unsecured credit rating by Moody’s or (ii) the conversion of the Subordinated Notes into equity and the credit ratings of the Subordinated Notes by Moody’s and S&P no longer exist, and provided further that at such time as either (i) or (ii) above occur, no Default or Event of Default exists and is continuing.

Section 5.22. Payments on Certain Indebtedness. The Borrower will not, nor will it permit any Subsidiary to, 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 Indebtedness, 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 Indebtedness, except:

(a) payments of Indebtedness created under the Loan Documents;

(b) payments of regularly scheduled interest and principal payments or other regularly scheduled or required payments as and when due in respect of any Indebtedness or Receivable Securitizations

other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof;

(c) voluntary or optional prepayments in respect of any Indebtedness, other than prepayments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof, so long as no Default or Event of Default exists or results from any such voluntary or optional prepayment;

(d) refinancings of Indebtedness to the extent permitted by Section 5.12;

(e) payments of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; and

(f) payments of Indebtedness evidenced by the Senior Note Purchase Agreements.

Section 5.23. Investments, Loans, Advances, and Acquisitions. The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Wholly-Owned Subsidiary prior to such merger) any Equity Interests in, or evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, or make or permit to exist any loans or advances to, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

(a) Investments held by the Borrower or any Subsidiary in the form of cash equivalents or short-term marketable debt securities;

(b) investments, loans and advances existing on the date hereof and set forth on Schedule 5.23, to the extent such investments would not be permitted under any other clause of this Section;

(c) investments by the Borrower and its Subsidiaries in Equity Interests in their respective Subsidiaries, provided that any such Equity Interests issued by a Material Subsidiary shall be pledged to the extent required hereby;

(d) loans or advances made by the Borrower to any Subsidiary and made by any Subsidiary to the Borrower or any other Subsidiary in accordance with the limitations set forth in Section 5.12;

(e) loans or advances made by the Borrower to third parties other than Subsidiaries; provided that the Dollar Equivalent of the aggregate outstanding amount of all Indebtedness permitted under the permissions of this subclause (e) shall not at any time exceed \$25,000,000;

(f) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(g) transactions permitted by Section 5.10;

(h) extensions of trade credit in the ordinary course of business;

(i) investments in the Equity Interests in the special purpose entities established under the Receivable Securitizations permitted by Section 5.12; provided that, the aggregate amount of cash invested in all such entities shall not exceed \$1,000,000;

(j) Borrower or any Subsidiary may purchase, hold or acquire any Equity Interests in, or evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, or make or permit to exist any loans or advances to, or make or permit to exist any other investment or any other interest in, any other Person; provided that, the sum of the following made, acquired or held under the permissions of this clause (j) shall not exceed \$10,000,000 at any time: (i) the aggregate amount paid to acquire the Equity Interests, other securities, other investments or other interest in Persons; plus (ii) the aggregate outstanding principal amount of any such Indebtedness and other loans and advances;

(k) if no Default or Event of Default exists or would result therefrom, Borrower and any Subsidiary may acquire all the Equity Interests of any Person or all or substantially all of the assets of any Person or the assets of a Person constituting a business unit if:

(i) The proposed acquisition is an acquisition of the Equity Interests of a Target, the acquisition is structured so that the Target will become a Wholly-Owned Subsidiary or will, simultaneously with the acquisition be merged into the Borrower or a Wholly-Owned Subsidiary. If the proposed acquisition is an acquisition of a business unit or all or substantially all of the assets of a Person, the acquisition will be structured so that Borrower or one or more Wholly-Owned Subsidiaries will acquire the assets;

(ii) The Purchase Price (as defined below) for the proposed acquisition in question together with the Purchase Prices paid for all acquisitions consummated in the most recent twelve month period does not exceed a Dollar Equivalent amount equal to EBITDA for such period; provided that if as of the date of any proposed acquisition, (A) the unsecured senior debt rating of the Borrower has been upgraded to BBB or better by S&P and Baa2 or better by Moody's; (B) the Borrower has retained those ratings for more than 6 months; and (C) such debt is not on negative watch by any rating agency which has issued the Borrower such debt rating, then the restrictions contained in this clause (ii) shall not apply; provided further, however, if at any time thereafter: (a) the unsecured senior debt rating of the Borrower has been downgraded below BBB by S&P or below Baa2 by Moody's or (b) such debt is on negative watch by any rating agency which has issued the Borrower such debt rating, then the restrictions contained in this clause (ii) shall apply to any proposed acquisition thereafter consummated (the term "**Purchase Price**" means, as of any date of determination and with respect to a proposed acquisition, the purchase price to be paid for the Target or its assets, including all cash consideration paid (whether classified as purchase price, non-compete or consulting payments or otherwise), the value of all other assets to be transferred by the purchaser in connection with such acquisition to the seller (including any stock issued to the seller) all valued in accordance with the applicable purchase agreement and the outstanding principal amount of all Indebtedness of the Target or that the purchaser assumed or acquired in connection with such acquisition);

(iii) Borrower shall have provided to the Administrative Agent and each Lender prior to or on the date that the proposed acquisition is to be consummated the following: (a) a certificate of a Responsible Officer of the Borrower (1) certifying that no Default or Event of Default exists or could reasonably be expected to occur as a result of the proposed acquisition, and (2) demonstrating that both as of the date of any such acquisition and immediately following such acquisition the Borrower is and on a pro forma basis projects that it will continue to be, in compliance with the financial covenants of this Agreement; and

(iv) Such acquisition has been: (i) in the event a corporation or its assets is the Target, either (x) approved by the Board of Directors of the corporation which is the Target, or (y) recommended by such Board of Directors to the shareholders of such Target, (ii) in the event a partnership is the Target, approved by a majority (by percentage of voting power) of the partners of the Target, (iii) in the event an organization or entity other than a corporation or partnership is the Target, approved by a majority (by percentage of voting power) of the governing body, if any, or by a majority (by

percentage of ownership interest) of the owners of the Target or (iv) in the event the corporation, partnership or other organization or entity which is the Target is in bankruptcy, approved by the bankruptcy court or another court of competent jurisdiction; and

(l) promissory notes payable to Borrower or any of its Subsidiaries received in connection with the sale of their assets; provided that the applicable asset sale is permitted under the terms of Section 5.11, and (ii) the aggregate principal amount of all such promissory notes outstanding at any time shall not exceed 2.5% of the value of the consolidated assets of the Borrower and its Subsidiaries as of the last day of the fiscal year most recently ended prior to such time.

Section 5.24. Amendment of Material Documents. Borrower will not and will not permit any Subsidiaries to change or amend the terms of the Subordinated Notes, if the effect of such amendment is to: (a) increase the interest rate on the Subordinated Notes; (b) shorten the time of payments of principal or interest due under the Subordinated Notes; (c) change the subordination provisions thereof (or the subordination terms of any guaranty thereof); or (d) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holders of the Subordinated Notes in a manner materially adverse to the Administrative Agent or any Lender as senior creditors or the interests of the Lenders under this Agreement or any other Loan Document in any respect.

Section 5.25. Swap Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except: (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests or Indebtedness of the Borrower or any of its Subsidiaries) and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

Section 5.26. Limitations on Receivable Securitizations. The aggregate amount of the funds extended to purchase the receivables of the Borrower or any of its Subsidiaries which are outstanding at any time under all Receivable Securitizations and not repaid from collections on receivables shall at no time exceed the greater of (i) \$225,000,000, or (ii) an amount equal to Adjusted EBITDA for the previous twelve months.

ARTICLE 6.

EVENTS OF DEFAULT

In case of the happening of any of the following events (each an “**Event of Default**”):

(a) the Borrower defaults in the payment of any principal on any Loan or the reimbursement of any L/C Disbursement, in each case when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Borrower defaults in the payment of any interest on any Loan for more than five Business Days after the same becomes due and payable; or

(c) either (i) the Borrower defaults in the performance of or compliance with any term applicable to the Borrower and contained in Section 2.10(c), Sections 5.10 through 5.17, Section 5.18(d), or Section 5.23, or (ii) any Pledgor defaults in the performance or compliance with any term applicable to such Pledgor contained in the Pledge Agreement and such default is not remedied within 15 days after the earlier of (A) a Responsible Officer obtaining actual knowledge of such default and (B) the Borrower receiving written

notice of such default from the Administrative Agent or any Lender (any such written notice to be identified as a “notice of default” and to refer specifically to this paragraph (c) of Article 6); or

(d) any Obligated Party defaults in the performance of or compliance with any term contained in any Loan Document to which it is a party (other than those referred to in paragraphs (a), (b) and (c) of this Article 6) and such default is not remedied within 30 days after the earlier of (A) a Responsible Officer obtaining actual knowledge of such default and (B) the Borrower receiving written notice of such default from the Administrative Agent or any Lender (any such written notice to be identified as a “notice of default” and to refer specifically to this paragraph (d) of Article 6); or

(e) any representation or warranty made in writing by or on behalf of any Obligated Party or by any officer of any Obligated Party in any Loan Document or any certificate, financial statement, or other writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made or deemed made; or

(f) the Borrower or any Subsidiary: (i) is in default (as principal or as guarantor or other surety) in the payment of any principal of, or premium or make-whole amount or interest on, or other amount in respect of, any Subject Indebtedness (as defined below) or (ii) is in default in the performance of or compliance with any term of any evidence of any Subject Indebtedness or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition, such Subject Indebtedness: (A) has become, or has been declared, due and payable before its stated maturity or before its regularly scheduled dates of payment, or (B) the holder or holders of any such Indebtedness or any trustee or agent acting on its or their behalf is permitted (with or without the giving of notice, the lapse of time or both) to declare such Indebtedness due and payable before its stated maturity or before its regularly scheduled dates of payment or to terminate any commitment relating thereto (as used in this clause (f), the term “**Subject Indebtedness**” means (i) Indebtedness that is outstanding in an aggregate principal amount the Dollar Equivalent of which is at least \$25,000,000; or (ii) any Receivable Securitization in respect of which the Receivable Securitization Outstanding is at least \$25,000,000; or

(g) the Borrower or any Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; provided, however, that this clause (g) shall not apply to any Subsidiary of the Borrower the book value of whose total assets (determined in accordance with GAAP) is less than \$10,000,000; or

(h) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Borrower or any of its Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Borrower or any of its Subsidiaries, or any such petition shall be filed against the Borrower or any of its Subsidiaries and such petition shall not be dismissed within 60 days; provided, however, that this clause (h) shall not apply to any Subsidiary of the Borrower the book value of whose total assets (determined in accordance with GAAP) is less than \$10,000,000; or

(i) a final judgment or judgments for the payment of money aggregating in excess of \$25,000,000 are rendered against one or more of the Borrower and its Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or

(j) if (i) any Plan subject to the minimum funding standards of ERISA or the Code shall fail to satisfy such standards for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under Section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA Section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Borrower or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate amount of accumulated benefit obligations under all Plans subject to Title IV of ERISA (other than Multiemployer Plans), determined in accordance with Financial Accounting Standards Board Statement No. 87 or 132, as the case may be, as of the end of such Plans' most recently ended plan year on the basis of actuarial assumptions specified for funding purposes in such Plans' most recent actuarial valuation report, shall exceed the aggregate current value of the assets of such Plans by more than \$50,000,000, (iv) the Borrower or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Borrower or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Borrower or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Borrower or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, would reasonably be expected to have a Material Adverse Effect (as used in Article 6, the terms "employee benefit plan" and "employee welfare benefit plan" shall have the respective meanings assigned to such terms in Section 3 of ERISA);

(k) the occurrence of an Event of Default (as defined in the Intercreditor Agreement); or

(l) either the Subsidiary Guaranty or the Pledge Agreement shall for any reason cease to be in full force and effect and valid, binding and enforceable in accordance with its terms, or any Obligated Party shall so assert in writing;

then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent, at the request of the Required Lenders, shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the right of the Borrower to borrow hereunder or to request the issuance, amendment, extension or renewal or other modification of any Letter of Credit, (ii) exercise any rights that may be available upon an Event of Default to terminate or cancel any outstanding Letters of Credit, or require that the Borrower Cash Collateralize the L/C Obligations, and (iii) declare the Loans and all reimbursement obligations for L/C Disbursements, then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans and the reimbursement obligations for L/C Disbursements, so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder, shall become forthwith due and payable, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding; provided that in the case of any event described in paragraph (g) or (h) above with respect to any Obligated Party, all the Commitments of the Lenders, the commitment of the Swingline Lender to make Swingline Loans and the agreement of the Issuing Banks hereunder to issue Letters of Credit shall automatically terminate and the principal amount of all Loans and all reimbursement obligations for L/C Disbursements then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Obligated Parties accrued under the Loan Documents shall automatically become due and payable, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or

any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein to the contrary notwithstanding, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender. In addition to the other rights and remedies that the Lenders may have upon the occurrence of an Event of Default, the Required Lenders may direct: (i) the Collateral Agent to exercise the rights and remedies available to the Collateral Agent under the Intercreditor Agreement and the Pledge Agreement and (ii) the Administrative Agent to exercise the rights and remedies available to it under the Subsidiary Guaranty.

ARTICLE 7.

THE ADMINISTRATIVE AGENT

Section 7.01. Appointment and Authority. Each of the Lenders and each Issuing Bank hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and neither the Borrower nor any other Obligated Party shall have rights as a third party beneficiary of any of such provisions.

Section 7.02. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “**Lender**” or “**Lenders**” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 7.03. Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.09 and Article 6) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 7.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 7.05. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 7.06. Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the Issuing Banks appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring

Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 8.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Bank and as Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swingline Lender, (b) the retiring Issuing Bank and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

Section 7.07. Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 7.08. No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Syndication Agent or Joint Lead Arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

Section 7.09. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Obligated Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Liability shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Liabilities and all other obligations that are owing and unpaid hereunder or under the Loan Documents and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Sections 2.04(a) and (c) and 8.05) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.04(a) and 8.05.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Loans or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 7.10. Collateral and Guaranty Matters. The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Total Commitment and payment in full of all obligations to the Administrative Agent and the Lenders (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) subject to Section 8.09, if approved, authorized or ratified in writing by the Required Lenders; and

(b) to release any Guarantor from its obligations under the Subsidiary Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

The Lenders and the Issuing Banks acknowledge that Section 5.12 of the Intercreditor Agreement provides for the automatic release of Collateral in certain specified circumstances and authorizes the Collateral Agent to release Collateral in certain specified circumstances. With respect to the release of any Collateral, in the event of any conflict with the terms hereof and the terms of said Section 5.12 of the Intercreditor Agreement, the terms of Section 5.12 of the Intercreditor Agreement shall control.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Subsidiary Guaranty pursuant to this Section 7.10.

ARTICLE 8.

MISCELLANEOUS

Section 8.01. Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), 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 or sent by telecopier 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, the Administrative Agent, or the Swingline Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 8.01; and

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

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier 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). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Banks 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 Issuing Bank pursuant to Article 2 if such Lender or the Issuing Bank, 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 it 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 email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), 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 IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE

BORROWER MATERIALS. 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 PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrower, any Lender, any Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, and the Swingline Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the Swingline Lender. 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, telecopier 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 and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf 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 the Administrative Agent, each Lender and the Related Parties of each of them 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. 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 8.02. 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 the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Loan or issuance of a Letter of Credit, 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 8.03. Binding Effect. Subject to Article 4, this Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have received copies hereof (teletyped or otherwise) which, when taken together, bear the signature of each Lender.

Section 8.04. Successors and Assigns; Assignments and Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). 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, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in Letters of Credit and in Swingline Loans) at the time owing to it); provided that

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans 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 or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) 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 with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to rights in respect of Swingline Loans;

(iii) any assignment of a Commitment and the Loans at the time owing to a Lender must be approved by (a) the Administrative Agent, (b) the Swingline Lender, (c) each Issuing Bank that has issued Letters of Credit then outstanding in an aggregate principal amount (i) equal to or greater than \$35,000,000, and (2) which represents at such time more than 33.33% of all Letters of Credit issued and outstanding hereunder (such approval by such Issuing Bank not to be unreasonably withheld), and (d) so long as no Event of Default has occurred and is continuing, the Borrower (such approval by the Borrower not to be unreasonably withheld), unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee (the “**Assignment Fee**”) in the amount of \$2,500, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; provided, however, that in the event of two or more concurrent assignments to members of the same Assignee Group (which may be effected by a suballocation of an assigned amount among members of such Assignee Group) or two or more concurrent assignments by members of the same Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group), the Assignment Fee will be \$2,500 plus the amount set forth below:

<u>Transaction:</u>	<u>Additional Assignment Fee:</u>
First four concurrent assignments or suballocations to members of an Assignee Group (or from members of an Assignee Group, as applicable)	-0-
Each additional concurrent assignment or suballocation to a member of such Assignee Group (or from a member of such Assignee Group, as applicable)	\$500

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 8.04, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.11, 2.16, and 8.05 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a promissory note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection (b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent’s office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amounts of the Loans and L/C Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each of the Borrower, any Lender and any Issuing Bank at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower’s Affiliates or Subsidiaries) (each, a “**Participant**”) in all or a portion of such

Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Disbursements and/or Swingline Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the Issuing Banks shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 8.09(b) that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.11 and 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 8.06 as though it were a Lender, provided such Participant agrees to be subject to Section 2.14 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 2.11 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Non-U.S. Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 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 2.16(g) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its promissory note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America may, upon 30 days' notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor Swingline Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as Swingline Lender, as the case may be. If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.01(c). Upon the appointment of a

successor Swingline Lender, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Swingline Lender, as the case may be.

Section 8.05. Expenses; Indemnity; Damage Waiver; Funding and Exchange Losses.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by the Administrative Agent or any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or any Issuing Bank (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any Issuing Bank), in connection with the enforcement or protection of its rights after the occurrence of any Event of Default (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **INDEMNIFICATION BY THE BORROWER. THE BORROWER SHALL INDEMNIFY THE ADMINISTRATIVE AGENT (AND ANY SUB-AGENT THEREOF), THE SWINGLINE LENDER, EACH LENDER AND EACH ISSUING BANK, AND EACH RELATED PARTY OF ANY OF THE FOREGOING PERSON (EACH SUCH PERSON BEING CALLED AN "INDEMNITEE") AGAINST, AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND RELATED EXPENSES** (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by the Borrower or any other Obligated Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, the Prior Credit Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Substances on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any violation of or liability relating to Environmental Law related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Obligated Party, and regardless of whether any Indemnatee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross

negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Obligated Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Obligated Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. No Indemnitee referred to in this subsection (b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent that such damages are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or any Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or any Issuing Bank in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.21.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the parties hereto shall not assert, and each hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) THE BORROWER AGREES TO INDEMNIFY EACH LENDER (INCLUDING THE SWINGLINE LENDER) AND EACH ISSUING BANK AGAINST ANY DIRECT OR INDIRECT COSTS OR LOSSES (INCLUDING ANY DIRECT LOSSES DUE TO CURRENCY EXCHANGE RATES OR EXCHANGE CONTROLS), OR REASONABLE EXPENSE WHICH SUCH LENDER OR ISSUING BANK MAY SUSTAIN OR INCUR AS A CONSEQUENCE OF: (A) ANY FAILURE BY THE BORROWER TO BORROW OR TO CONVERT OR CONTINUE ANY LOAN HEREUNDER (INCLUDING AS A RESULT OF THE BORROWER'S FAILURE TO FULFILL ANY OF THE APPLICABLE CONDITIONS SET FORTH IN ARTICLE 4) AFTER IRREVOCABLE NOTICE OF SUCH BORROWING, CONVERSION OR CONTINUATION HAS BEEN GIVEN PURSUANT HERETO, (B) ANY PAYMENT, PREPAYMENT OR CONVERSION, ASSIGNMENT OR FUNDING OF A EUROCURRENCY RATE LOAN REQUIRED BY ANY PROVISION OF THIS AGREEMENT OR OTHERWISE MADE OR DEEMED MADE ON A DATE OTHER THAN THE LAST DAY OF THE INTEREST PERIOD APPLICABLE THERETO (INCLUDING AS A RESULT OF THE OPERATION OF SECTION 2.01(c)), (C) ANY DEFAULT IN PAYMENT OR PREPAYMENT OF THE PRINCIPAL AMOUNT OF ANY LOAN OR ANY REIMBURSEMENT OBLIGATION IN RESPECT OF ANY L/C DISBURSEMENT OR ANY PART THEREOF OR INTEREST ACCRUED THEREON, AS

AND WHEN DUE AND PAYABLE (AT THE DUE DATE THEREOF, WHETHER BY SCHEDULED MATURITY, ACCELERATION, IRREVOCABLE NOTICE OF PREPAYMENT OR OTHERWISE), (D) THE OCCURRENCE OF ANY EVENT OF DEFAULT, OR (E) THE FAILURE TO PAY ANY LOAN OR L/C DISBURSEMENT DENOMINATED IN AN AVAILABLE CURRENCY, OR ANY INTEREST THEREON, IN THE AVAILABLE CURRENCY IN WHICH SUCH LOAN WAS MADE OR APPLICABLE LETTER OF CREDIT ISSUED, INCLUDING, IN EACH SUCH CASE, ANY LOSS OR REASONABLE EXPENSE SUSTAINED OR INCURRED OR TO BE SUSTAINED OR INCURRED BY SUCH LENDER OR ISSUING BANK IN LIQUIDATING OR EMPLOYING DEPOSITS FROM THIRD PARTIES, OR WITH RESPECT TO COMMITMENTS MADE OR OBLIGATIONS UNDERTAKEN WITH THIRD PARTIES, TO EFFECT OR MAINTAIN ANY LOAN OR LETTER OF CREDIT HEREUNDER OR ANY PART THEREOF. SUCH LOSS SHALL INCLUDE, AS APPLICABLE: (i) AN AMOUNT EQUAL TO THE EXCESS, IF ANY, AS REASONABLY DETERMINED BY SUCH LENDER OR ISSUING BANK, OF (A) ITS COST OF OBTAINING THE FUNDS FOR THE LOAN OR LETTER OF CREDIT BEING PAID, PREPAID, CONVERTED OR NOT BORROWED FOR THE PERIOD FROM THE DATE OF SUCH PAYMENT, PREPAYMENT OR FAILURE TO BORROW TO THE LAST DAY OF THE INTEREST PERIOD FOR SUCH LOAN (OR, IN THE CASE OF A FAILURE TO BORROW THE INTEREST PERIOD FOR SUCH LOAN WHICH WOULD HAVE COMMENCED ON THE DATE OF SUCH FAILURE) OVER (B) THE AMOUNT OF INTEREST (AS REASONABLY DETERMINED BY SUCH LENDER) THAT WOULD BE REALIZED BY SUCH LENDER IN RE-EMPLOYING THE FUNDS SO PAID, PREPAID OR NOT BORROWED FOR SUCH PERIOD OR INTEREST PERIOD, AS THE CASE MAY BE, (ii) ANY LOSS INCURRED IN LIQUIDATING OR CLOSING OUT ANY FOREIGN CURRENCY CONTRACT, AND (iii) ANY LOSS ARISING FROM ANY CHANGE IN THE VALUE OF DOLLARS IN RELATION TO ANY LOAN OR L/C DISBURSEMENT MADE IN ANOTHER AVAILABLE CURRENCY WHICH WAS NOT PAID ON THE DATE DUE OR WHICH WAS NOT PAID IN THE AVAILABLE CURRENCY IN WHICH IT WAS MADE OR IN WHICH THE APPLICABLE LETTER OF CREDIT WAS ISSUED.

(f) AT THE REQUEST OF BORROWER, IN ORDER TO REDUCE THE TRANSACTION COSTS INCURRED BY BORROWER IN CONNECTION WITH THE CLOSING OF THIS TRANSACTION, INSTEAD OF TERMINATING THE PRIOR CREDIT AGREEMENT AND ALL LOAN DOCUMENTS EXECUTED IN CONNECTION WITH THE PRIOR CREDIT AGREEMENT AND THEN UTILIZING NEW LOAN DOCUMENTS, ADMINISTRATIVE AGENT AND LENDERS HAVE AGREED WITH BORROWER'S REQUEST THAT THEY (SUBJECT TO THE TERMS CONTAINED HEREIN) FUND THE PAYOFF OF THE INDEBTEDNESS UNDER THE PRIOR CREDIT AGREEMENT BUT KEEP THE PRIOR LOAN DOCUMENTS IN PLACE AND MODIFY, AMEND AND EXTEND (BUT NOT EXTINGUISH) SUCH DOCUMENTS AND ADMIT NEW LENDERS AND REMOVE JPMORGAN CHASE BANK, N.A. AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT AND REMOVE CERTAIN LENDERS AND SUBSTITUTE BANK OF AMERICA AS THE NEW ADMINISTRATIVE AGENT AND COLLATERAL AGENT. AS A CONDITION PRECEDENT TO BANK OF AMERICA AND THE NEW LENDERS ACCEPTING THEIR NEW ROLES HEREUNDER, BORROWER SHALL INDEMNIFY BANK OF AMERICA AND THE NEW LENDERS HEREUNDER AND HOLD THEM HARMLESS IN THE MANNER STATED IN SECTION 8.05(b) EXCEPT THAT IN THE CASE OF THIS INDEMNITY IT SHALL BE FOR ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND RELATED EXPENSES INCURRED BY AN INDEMNITEE RELATED TO THE ACTIONS OF BORROWER WHICH OCCURRED DURING THAT PERIOD OF TIME PRIOR TO THE EFFECTIVE DATE. ALL EXISTING LETTERS OF CREDIT SHALL BE DEEMED TO HAVE BEEN ISSUED PURSUANT

HERETO, AND FROM AND AFTER THE EFFECTIVE DATE SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS AND CONDITIONS HEREOF.

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

(h) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Total Commitment and the repayment, satisfaction or discharge of all the other obligations hereunder.

Section 8.06. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its 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 indebtedness at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement or any Swap Agreement held by such Lender or Affiliate, irrespective of whether or not such Lender or Affiliate shall have made any demand and although such obligations may be unmatured. The rights of each Lender and Affiliate of a Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender or Affiliate may have and are subject to the terms of the Intercreditor Agreement.

Section 8.07. Replacement of Lenders. If any Lender requests compensation under Section 2.11 or if any Lender delivers a notice pursuant to Section 2.12, 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 2.16, or if any Lender is a Defaulting Lender, or if any Lender fails to execute and deliver any consent, amendment or waiver to this Agreement or any other Loan Document requested by the Borrower by the date specified by the Borrower (or gives the Borrower written notice prior to such date of its intention not to do so), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 8.04), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 8.04(b)(iv);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 2.11 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments thereafter; and

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

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

Section 8.08. **Governing Law; Jurisdiction, Etc.**

(a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

(b) **SUBMISSION TO JURISDICTION.** THE BORROWER AND EACH OTHER OBLIGATED PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS SITTING IN DALLAS COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF TEXAS, 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 TEXAS 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 THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY ISSUING BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER OBLIGATED PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** THE BORROWER AND EACH OTHER OBLIGATED 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 8.01. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 8.09. Waivers; Amendments, Etc.

(a) No failure or delay of any Obligated Party, the Administrative Agent, any Issuing Bank or any Lender in exercising any power or right hereunder 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 Administrative Agent, the Issuing Banks and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any Obligated Party in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

(b) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Obligated Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Obligated Party, as the case may be, 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 given; provided, however, that no such amendment, waiver or consent shall:

(i) waive any condition set forth in Section 4.02 without the written consent of each Lender (which consent may be provided as described in the final paragraph of Section 4.02);

(ii) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Article 6) without the written consent of such Lender;

(iii) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(iv) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 8.09) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend Section 2.07 or to waive any obligation of any Borrower to pay interest or Letter of Credit Fees at the rate provided in Section 2.07 or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(v) change any Section in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(vi) amend Section 1.06 or the definition of "Alternative Currency" without the written consent of each Lender; or

(vii) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by any Issuing Bank in addition to the Lenders required above, affect the rights or duties of any Issuing Bank under this Agreement or any document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) any contract between the Administrative Agent and the Borrower may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

Section 8.10. Entire Agreement; Amendment and Restatement. THIS AGREEMENT (INCLUDING THE SCHEDULES AND EXHIBITS HERETO) AND THE OTHER LOAN DOCUMENTS CONSTITUTE A "**LOAN AGREEMENT**" AS DEFINED IN SECTION 26.02(a) OF THE TEXAS BUSINESS AND COMMERCE CODE, AND REPRESENT THE ENTIRE CONTRACT AMONG THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF AND THEREOF. ANY PREVIOUS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE PRIOR CREDIT AGREEMENT) AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF IS SUPERSEDED BY THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. **This Agreement amends and restates in its entirety the Prior Credit Agreement. The execution of this Agreement and the other Loan Documents executed in connection herewith does not extinguish the indebtedness, liens or loan documents outstanding in connection with the Prior Credit Agreement and the other Loan Documents nor does it constitute a novation with respect to such indebtedness.** Each Obligated Party that was a party to any Loan Document prior to the date hereof represents and warrants that as of the Effective Date there are no claims or offsets against or defenses or counterclaims to its obligations under the Prior Credit Agreement or any of the other documents executed in connection therewith. To induce the Lenders, the Issuing Banks and the Administrative Agent to enter into this Agreement, each such Obligated Party (by entering into the Loan Documents to which it is a party) waives any and all such claims, offsets, defenses or counterclaims, whether known or unknown, arising prior to the Effective Date and relating to the Prior Credit Agreement, Loan Documents or the transactions contemplated hereby or thereby. Without limiting the generality of the foregoing and notwithstanding any Loan Document to the contrary, each Obligated Party (by entering into the Loan Documents to which it is a party) the Administrative Agent, the Issuing Banks and the Lenders agree and acknowledge that the term "**Credit Agreement**" as used in each Loan Document means this Agreement.

Section 8.11. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties 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 8.12. Counterparts. This Agreement may be executed in two or more counterparts and on telecopy counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract, and shall become effective as provided in Section 8.03.

Section 8.13. 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 8.14. Interest Rate Limitation.

(a) Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges which are treated as interest under applicable law (collectively the “**Charges**”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the Maximum Rate (as defined below) which may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable on the Loans of such Lender, together with all Charges payable to such Lender, shall be limited to the Maximum Rate. As used herein, the term “**Maximum Rate**” means, at any time and with respect to any Lender, the maximum rate of non-usurious interest under applicable law that such Lender may charge Borrower. The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges contracted for, charged, or received in connection with the Loan Documents that constitute interest under applicable law. Each change in any interest rate provided for herein based upon the Maximum Rate resulting from a change in the Maximum Rate shall take effect without notice to Borrower at the time of such change in the Maximum Rate. For purposes of determining the Maximum Rate under Texas law, the applicable rate ceiling shall be the weekly ceiling described in, and computed in accordance with Chapter 303 of the Texas Finance Code.

(b) If the amount of interest, together with all Charges, payable for the account of any Lender in respect of any interest computation period is reduced pursuant to paragraph (a) of this Section and the amount of interest, together with all Charges, payable for such Lender’s account in respect of any subsequent interest computation period, computed pursuant to Section 2.06, would be less than the Maximum Rate, then the amount of interest, together with all Charges, payable for such Lender’s account in respect of such subsequent interest computation period shall, to the extent permitted by applicable law, be automatically increased to such Maximum Rate; provided that at no time shall the aggregate amount by which interest paid for the account of any Lender has been increased pursuant to this paragraph (b) exceed the aggregate amount by which interest, together with all Charges, paid for its account has theretofore been reduced pursuant to paragraph (a) of this Section.

(c) No provision of this Agreement shall require the payment or the collection of interest in excess of the maximum amount permitted by applicable law. If any excess of interest in such respect is hereby provided for, or shall be adjudicated to be so provided, in this Agreement or otherwise in connection with this loan transaction, the provisions of this Section shall govern and prevail and neither the Borrower nor the sureties, guarantors, successors, or assigns of the Borrower shall be obligated to pay the excess amount of such interest or any other excess sum paid for the use, forbearance, or detention of sums loaned pursuant hereto. In the event any Lender ever receives, collects, or applies as interest any such sum, such amount which would be in excess of the maximum amount permitted by applicable law shall be applied as a payment and reduction of the principal of the Loans; and, if the principal of the Loans has been paid in full, any remaining excess shall forthwith be paid to the Borrower. In determining whether or not the interest paid or payable exceeds the Maximum Rate, the Borrower and each Lender shall, to the extent permitted by applicable law, (a) characterize any non-principal payment as an expense, fee, or premium rather than as interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the entire contemplated term of the Loans so that interest for the entire term does not exceed the Maximum Rate.

Section 8.15. Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing Banks agrees to maintain the confidentiality of the Information (as defined below),

except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, any Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "**Information**" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the Issuing Banks acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable law, including Federal and state securities laws.

Section 8.16. Non-Application of Chapter 346 of the Texas Finance Code. The provisions of Chapter 346 of the Texas Finance Code are specifically declared by the parties hereto not to be applicable to this Agreement or to the transactions contemplated hereby.

Section 8.17. **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 8.18. USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act.

Section 8.19. Judgment Currency. This is a loan transaction in which the specification of the Available Currency is of the essence, and the stipulated currency shall in each instance be the currency of account and payment in all instances. A payment obligation in one currency hereunder (the “Original Currency”) shall not be discharged by an amount paid in another currency (the “Other Currency”), whether pursuant to any judgment expressed in or converted into any Other Currency or in another place except to the extent that such tender or recovery results in the effective receipt by a party hereto of the full amount of the Original Currency payable to such party. If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in the Original Currency into the Other Currency, the rate of exchange that shall be applied shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase Original Currency at the relevant office with the Other Currency on the Business Day next preceding the day on which such judgment is rendered. The obligation of the Borrower and the Guarantors in respect of any such sum due from it to the Administrative Agent, any Issuing Bank or any Lender under any Loan Document (in this Section 8.19 called an “Entitled Person”) shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following receipt by such Entitled Person of any sum adjudged to be due hereunder in the Other Currency such Entitled Person may in accordance with normal banking procedures purchase the Original Currency with the amount of the judgment currency so adjudged to be due; and the Borrower, as a separate obligation and notwithstanding any such judgment, agrees to indemnify such Entitled Person against, and to pay such Entitled Person on demand, in the Original Currency, the amount (if any) by which the sum originally due to such Entitled Person in the Original Currency hereunder exceeds the amount of the Other Currency so purchased.

Section 8.20. Payments Set Aside. To the extent that any payment by or on behalf of any Borrower is made to the Administrative Agent, any Issuing Bank or any Lender, or the Administrative Agent, any Issuing Bank 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 Issuing Bank or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under the Bankruptcy Code of the United States or any 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, 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 Issuing Bank 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 applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the Issuing Banks under clause (b) of the preceding sentence shall survive the payment in full of the obligations hereunder and the termination of this Agreement.

Section 8.21. Time is of the Essence. Time is of the essence in the performance of the Loan Documents.

Section 8.22. Independence of Covenants. All covenants under the Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or such condition exists.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

LENNOX INTERNATIONAL INC.

By: _____

Susan K. Carter, Executive Vice President, Chief
Financial Officer and Treasurer

BANK OF AMERICA, N.A., as Administrative Agent

By:

David A. Johanson
Vice President

BANK OF AMERICA, N.A., as a Lender, as an Issuing
Bank and as Swingline Lender

By: _____
Steven A. Mackenzie
Senior Vice President

JPMORGAN CHASE BANK, N.A.

By: _____
Name: _____
Title: _____

THE BANK OF NOVA SCOTIA

By: _____
Name: _____
Title: _____

THE BANK OF TOKYO-MITSUBISHI, LTD.

By: _____
Name: _____
Title: _____

WELLS FARGO BANK, N.A.

By: _____
Name: _____
Title: _____

THE ROYAL BANK OF SCOTLAND plc

By:

Grover A. Fitch
Senior Vice President

WACHOVIA BANK, NA

By: _____
Jennifer L. Norris
Senior Vice President

BANK OF TEXAS, N.A.

By: _____
Name: _____
Title: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

COMPASS BANK

By: _____
Michael Keith
Senior Vice President

THE NORTHERN TRUST COMPANY

By: _____
Name: _____
Title: _____

COMERICA BANK

By: _____
Janet L. Wheeler
Assistant Vice President

AMEGY BANK NATIONAL ASSOCIATION

By: _____
Melinda N. Jackson
Senior Vice President

UBS LOAN FINANCE LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CALYON NEW YORK BRANCH

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

FIRST TENNESSEE BANK NATIONAL ASSOCIATION

By: _____
Stephen R. Deaton
Senior Vice President

REGIONS BANK

By: _____
Robert J. Merkle
Senior Vice President

THE BANK OF NEW YORK

By: _____
Name: _____
Title: _____

SECOND AMENDED AND RESTATED PLEDGE AGREEMENT

THIS SECOND AMENDED AND RESTATED PLEDGE AGREEMENT (the "**Agreement**") dated as of July 8, 2005 is between **LENNOX INTERNATIONAL INC.** (the "**Company**" and a "**Pledgor**"), and **BANK OF AMERICA, N.A.**, as collateral agent for itself and the other Creditors (as defined in the Intercreditor Agreement referred to below) (the "**Secured Party**").

RECITALS:

A. The Company has entered into that certain Second Amended and Restated Intercreditor Agreement dated as of July 8, 2005 with certain of the Company's other subsidiaries and noteholders, other lenders party thereto, the administrative agent for such lenders and the Secured Party (such Intercreditor Agreement, as it may hereafter be amended, restated, supplemented or otherwise modified from time to time, being hereinafter referred to as the "**Intercreditor Agreement**"), and capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Intercreditor Agreement).

B. The Company, Lennox Global Ltd. and the Secured Party previously executed that certain Amended and Restated Pledge Agreement dated September 11, 2003 (the "**Prior Pledge Agreement**"), which amended and restated that certain Pledge Agreement dated August 15, 2001 (the "**Original Pledge Agreement**"). The Company and the Secured Party desire to amend and restate the Prior Pledge Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the undersigned parties and any Subsidiary hereafter added as a "**Pledgor**" hereto pursuant to a Subsidiary Pledgor Joinder Agreement in substantially the form of **Schedule 5** annexed hereto (each a "**Pledgor**" and collectively the "**Pledgors**") agree as follows:

ARTICLE 1.**Security Interest and Pledge**

A. **Security Interest and Pledge.** As collateral security for the prompt payment in full when due of all Obligations, each Pledgor hereby pledges and grants to Secured Party a first priority security interest in all of such Pledgor's right, title and interest in and to the following property (such property being hereinafter sometimes called the "**Collateral**"):

1. all the capital stock, other equity securities, and all other ownership interests in, the Subsidiaries described on **Schedule 1** hereto under such Pledgor's name and all other of its directly owned Material Subsidiaries that are organized under the laws of the United States of America or a jurisdiction therein and are hereafter created or acquired and owned by such Pledgor, whether any of the foregoing are now owned or hereafter acquired, including the capital stock or other ownership interests described on **Schedule 1** under such Pledgor's name; and

2. the capital stock, other equity securities and all other ownership interests specifically described under such Pledgor's name on **Schedule 2** (the issuers of such stock or other interest and any other Subsidiary, besides Lake Park Insurance Ltd., organized under the laws of a jurisdiction outside the United States of America, herein the "**Foreign Subsidiaries**") and so much of such Pledgor's right, title and interest in any other capital stock or other ownership interests issued by the Foreign Subsidiaries described on **Schedule 2** or any other Foreign Subsidiary that is a Material Subsidiary and is hereafter created or acquired, as is necessary so that not more than and not less than

sixty-five percent (65%) of the capital stock or other ownership interest in each such Foreign Subsidiary is pledged in total hereunder; and

3. all proceeds, distributions, dividends, stock dividends, securities, payment intangibles and other property, rights, interests and other general intangibles that it receives or is at any time entitled to receive on account of the property described in the preceding clauses (a) and (b).

However, the Obligations secured by this Agreement shall be limited, with respect to any Pledgor that is a Subsidiary, to an aggregate amount equal to the largest amount that would not render such Pledgor's obligations hereunder and under the other Financing Documents subject to avoidance under Section 544 or 548 of the United States Bankruptcy Code or under any applicable state law relating to fraudulent transfers or conveyances.

II.

Representations and Warranties

Each Pledgor represents and warrants to Secured Party that:

A. Title. It owns, and with respect to Collateral acquired after the date hereof, it will own, legally and beneficially, its Collateral free and clear of any lien, security interest, pledge, claim, or other encumbrance or any right or option on the part of any third Person to purchase or otherwise acquire its Collateral or any part thereof, except for the security interest granted hereunder. Its Collateral is not subject to any restriction on transfer or assignment except for compliance with the Financing Documents and compliance with applicable federal and state securities laws and regulations promulgated thereunder. It has the unrestricted right to pledge its Collateral as contemplated hereby. All of the capital stock or other equity interests pledged as its Collateral have been duly and validly issued and are fully paid and non-assessable. Schedule 1 hereto sets forth the percentage of ownership interests of each Pledgor in the Collateral identified on such schedule.

B. Principal Place of Business; Jurisdiction of Organization. Its principal place of business, chief executive office, the office where it keeps its books and records and its jurisdiction of organization are each identified on Schedule 4 hereto. Within the last four months from the date hereof it has not (a) had any other chief place of business, chief executive office, or jurisdiction of organization; (b) acquired substantially all of the assets of any Person; or (c) merged with or into a Person. It does not do business on the date hereof and has not done business during the past five years prior to the date hereof under any trade-name or fictitious business name.

C. Delivery of Collateral. Except as provided by Section 4.03, it has delivered to Secured Party all of its Collateral the possession of which is necessary to perfect the security interest of Secured Party therein.

III.

Affirmative and Negative Covenants

Each Pledgor covenants and agrees with Secured Party that:

A. Delivery. Prior to or concurrently with the execution and delivery of this Agreement, it shall deliver to Secured Party all certificate(s) of capital stock identified in Section 1.01 hereof, accompanied by undated stock powers or assignments, as applicable, duly executed in blank. Each time

Section 1.01 hereto is amended in accordance with Section 3.05 hereof or otherwise, it shall deliver to Secured Party all new certificate(s) identified in any Pledge Amendment delivered pursuant to Section 3.05 or otherwise identified, accompanied by undated stock powers or assignments, as applicable, duly executed in blank.

B. Encumbrances. It shall not create, permit, or suffer to exist, and shall defend the Collateral against, any lien, security interest, or other encumbrance on the Collateral except the pledge and security interest of Secured Party hereunder. It shall defend Pledgor's rights in the Collateral and Secured Party's security interest in the Collateral against the claims of all Persons.

C. Distributions. If it shall become entitled to receive or shall receive: (i) any stock certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase, or reduction of capital or issued in connection with any reorganization), option or rights, whether as an addition to, in substitution of, or in exchange for any Collateral; or (ii) subject to the right of such Pledgor to receive cash dividends, distributions and other payments under Section 4.03 hereof or as may otherwise be provided in the Credit Facilities: (a) any sums paid in respect of the Collateral upon the liquidation or dissolution of the issuer thereof; (b) any other distribution of capital made on or in respect of the Collateral or any other property distributed upon or in respect of the Collateral pursuant to any recapitalization or reclassification of the capital of the issuer thereof or pursuant to any reorganization of the issuer thereof; or (c) any other Collateral the possession of which is necessary to perfect the security interest of Secured Party therein, then it agrees to accept the same as Secured Party's agent and to hold the same in trust for Secured Party, and to deliver the same forthwith to Secured Party in the exact form received, with the appropriate endorsement when necessary and/or appropriate undated stock powers or assignments duly executed in blank, to be held by Secured Party as additional Collateral for the obligations secured hereby, subject to the terms hereof. Subject to the right of the Pledgors to receive cash dividends, distributions and other payments under Section 4.03 hereof, all sums of money and property so paid or distributed in respect of the Collateral that are received by a Pledgor shall, until paid or delivered to Secured Party, be held by such Pledgor in trust as additional security for the Obligations.

D. Additional Securities; Application of Article 8. No Pledgor shall consent to or approve the issuance of any additional shares of any class of capital stock or any additional ownership interest of the issuer of any Collateral, or any securities convertible into, or exchangeable for, any such shares or ownership interest or any warrants, options, rights, or other commitments entitling any Person to purchase or otherwise acquire any such shares or any additional ownership interest (any of the foregoing herein an "**Equity Right**"); provided however, a Pledgor may consent to or approve the issuance of any Equity Right if such Equity Right is permitted to be issued under the terms of the Credit Facilities and if such Equity Right is granted to such Pledgor and is delivered to Secured Party as additional Collateral in accordance with the terms hereof to secure the obligations secured hereby. If any of the Collateral consists of interests in a partnership or limited liability company, it shall not permit such interest to be evidenced by a certificate (except for those interests evidenced by a certificate as of the date hereof as described on the Schedules hereto or to become a "security" governed by the provisions of Article 8 of the Uniform Commercial Code as in effect from time to time in the State of Texas (the "UCC")).

E. Additional Pledged Collateral. Each Pledgor shall pledge hereunder, immediately upon its acquisition thereof, any and all additional shares of stock, other certificates or other instruments evidencing Collateral. Each Pledgor agrees that it will, upon obtaining any additional shares of stock, other certificates or other instruments required to be pledged hereunder as provided in this Section 3.05 or Section 3.03 or Section 3.04 or which is otherwise required to be pledged hereunder under the terms of the Financing Documents, promptly (and in any event within fifteen Business Days) deliver to Secured Party a Pledge Amendment, duly executed by such Pledgor, in substantially the form of Schedule 3

annexed hereto (a “**Pledge Amendment**”), in respect of the additional property to be pledged pursuant to this Agreement. Each Pledgor hereby authorizes Secured Party to attach each Pledge Amendment to this Agreement and agrees that all property listed on any Pledge Amendment delivered to Secured Party shall for all purposes hereunder be considered Collateral; provided that the failure of any Pledgor to execute a Pledge Amendment with respect to any additional property pledged pursuant to this Agreement shall not impair the security interest of Secured Party therein or otherwise adversely affect the rights and remedies of Secured Party hereunder with respect thereto.

F. **Further Assurances.** At any time and from time to time, upon the reasonable request of Secured Party, and at the sole expense of the Pledgors, a Pledgor shall promptly execute and deliver all such further documentation and take such further action as Secured Party may deem necessary or desirable to preserve and perfect its security interest in the Collateral and carry out the provisions and purposes of this Agreement, including, without limitation, the execution and filing of such financing statements as Secured Party may require (the Secured Party is hereby authorized to file without the consent or approval of any Pledgor, any financing statement naming it as Secured Party and such Pledgor as the Debtor which describes such Pledgor’s Collateral).

G. **Sale of Collateral.** No Pledgor shall sell, assign, or otherwise dispose of the Collateral or any part thereof without the prior written consent of all the Lenders or except as permitted by Section 5.12 of the Intercreditor Agreement.

H. **Corporate Changes.** No Pledgor shall change its name, identity, or corporate structure in any manner that might make any financing statement filed in connection with this Agreement seriously misleading, in Secured Party’s judgment, unless such Pledgor shall have given Secured Party thirty (30) days prior written notice thereof and shall have taken all action deemed necessary or desirable by Secured Party to make each financing statement not seriously misleading. No Pledgor shall change its location (determined as provided in Section 9.307 of the UCC) unless it shall have given Secured Party thirty (30) days’ prior written notice thereof and shall have taken all action deemed necessary or desirable by Secured Party to cause its security interest in the Collateral to be protected and perfected with the priority required by this Agreement, including, without limitation, the delivery of a legal opinion satisfactory to the Secured Party as to the continued perfection and priority of the security interest hereby created.

IV.

Rights of Secured Party and Pledgors

A. **Power of Attorney.** EACH PLEDGOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS SECURED PARTY AND ANY OFFICER OR AGENT THEREOF, WITH FULL POWER OF SUBSTITUTION, AS ITS TRUE AND LAWFUL ATTORNEY-IN-FACT WITH FULL IRREVOCABLE POWER AND AUTHORITY IN THE PLACE AND STEAD AND IN THE NAME OF THE APPLICABLE PLEDGOR OR IN ITS OWN NAME, IN SECURED PARTY’S DISCRETION, WHEN AN EVENT OF DEFAULT HAS OCCURRED AND IS CONTINUING, TO TAKE ANY AND ALL ACTION AND EXECUTE ANY AND ALL DOCUMENTS AND INSTRUMENTS WHICH MAY BE NECESSARY OR DESIRABLE TO ACCOMPLISH THE PURPOSES OF THIS AGREEMENT AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, HEREBY GIVES SECURED PARTY THE POWER AND RIGHT ON BEHALF OF PLEDGOR AND IN ITS OWN NAME TO DO, WHEN AN EVENT OF DEFAULT HAS OCCURRED AND IS CONTINUING, ANY OF THE FOLLOWING WITHOUT NOTICE TO OR THE CONSENT OF ANY PLEDGOR:

1. to demand, sue for, collect, or receive in the name of a Pledgor or in its own name, any money or property at any time payable or receivable on account of or in exchange for any of the Collateral and, in connection therewith, endorse checks, notes, drafts, acceptances, money orders, or any other instruments for the payment of money under the Collateral;

2. to pay or discharge taxes, liens, security interests, or other encumbrances levied or placed on or threatened against the Collateral;

3. (i) to direct the issuer of any Collateral to make payment of any and all monies due and to become due thereunder directly to Secured Party or as Secured Party shall direct; (ii) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral; (iii) to sign and endorse any drafts, assignments, proxies, stock powers, verifications, notices, and other documents relating to the Collateral; (iv) to commence and prosecute any suit, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (v) to participate in the defense of, or if a Pledgor fails to defend, to defend any suit, action, or proceeding brought against Pledgor with respect to any Collateral; (vi) to settle, compromise, or adjust any suit, action, or proceeding described in clauses (iv) or (v) above, and, in connection therewith, to give such discharges or releases as Secured Party may deem appropriate; (vii) to exchange any of the Collateral for other property upon any merger, consolidation, reorganization, recapitalization, or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any committee, depository, transfer agent, registrar, or other designated agency upon such terms as Secured Party may determine; and (viii) to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Secured Party were the absolute owner thereof for all purposes, and to do, at Secured Party's option and the Pledgor's expense, at any time, or from time to time, all acts and things which Secured Party deems necessary to protect, preserve, or realize upon the Collateral and Secured Party's security interest therein.

THE POWER OF ATTORNEY GRANTED IN THIS SECTION 4.01 IS A POWER COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE. Secured Party shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to Secured Party in this Agreement, and Secured Party shall not be liable for any failure to do so or any delay in doing so. Secured Party shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or in its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct. This power of attorney is conferred on Secured Party solely to protect, preserve and realize upon its security interest in the Collateral.

B. Voting Rights. Unless an Event of Default has occurred and is continuing, each Pledgor shall be entitled to exercise any and all voting rights pertaining to the Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement, any Credit Facility or the Intercreditor Agreement. Secured Party shall execute and deliver to the Pledgors all such proxies and other instruments as any Pledgor may reasonably request for the purpose of enabling such Pledgor to exercise the voting rights which it is entitled to exercise pursuant to this Section.

C. Dividends. Unless an Event of Default has occurred and is continuing, the Pledgors shall be entitled to receive and retain any dividends, distributions and other payments in respect of the Collateral in cash (other than payments described in clause (ii)(a) of Section 3.03) to the extent and only to the extent that such dividends, distributions or other payments are permitted by the Credit Facilities and applicable law.

D. Secured Party's Duty of Care. Other than the exercise of reasonable care in the physical custody of the Collateral while held by Secured Party hereunder, Secured Party shall have no responsibility for or obligation or duty with respect to all or any part of the Collateral or any matter or proceeding arising out of or relating thereto, including, without limitation, any obligation or duty to collect any sums due in respect thereof or to protect or preserve any rights against prior parties or any other rights pertaining thereto, it being understood and agreed that the Pledgors shall be responsible for preservation of all rights in the Collateral. Without limiting the generality of the foregoing, Secured Party shall be conclusively deemed to have exercised reasonable care in the custody of the Collateral if Secured Party takes such action, for purposes of preserving rights in the Collateral, as any Pledgor may reasonably request in writing, but no failure or omission or delay by Secured Party in complying with any such request by a Pledgor, and no refusal by Secured Party to comply with any such request by such Pledgor, shall be deemed to be a failure to exercise reasonable care.

V.

Default

A. Rights and Remedies. If any Event of Default has occurred and is continuing, Secured Party shall have the following rights and remedies:

1. In addition to all other rights and remedies granted to Secured Party in this Agreement, the Intercreditor Agreement and in any other instrument or agreement securing, evidencing, or relating to any of the obligations secured hereby, Secured Party shall have all of the rights and remedies of a secured party under the UCC or of a creditor with a lien or charge on the Collateral under the laws of the jurisdiction of the organization of the issuer of any of the Collateral. Without limiting the generality of the foregoing, Secured Party may (i) without demand or notice to any Pledgor, collect, receive, or take possession of the Collateral or any part thereof, (ii) sell or otherwise dispose of the Collateral, or any part thereof, in one or more parcels at public or private sale or sales, at Secured Party's offices or elsewhere, for cash, on credit, or for future delivery and/or (iii) bid and become a purchaser at any public (or private, to the extent permitted by applicable law) sale free of any right or equity of redemption in any Pledgor, which right or equity is hereby expressly waived and released by such Pledgor. Upon the request of Secured Party, a Pledgor shall assemble the Collateral not already in the possession of Secured Party and make it available to Secured Party at any place designated by Secured Party that is reasonably convenient to such Pledgor and Secured Party. Each Pledgor agrees that Secured Party shall not be obligated to give more than ten (10) days prior written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters; provided, however, if any of the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party may sell or otherwise dispose of the Collateral without notification of any kind. Secured Party shall not be obligated to make any sale of the Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor shall be liable for all reasonable expenses of retaking, holding, preparing for sale, or the like, and all reasonable attorneys' fees and other expenses incurred by Secured Party in connection with the collection of the obligations secured hereby and the enforcement of Secured Party's rights under this Agreement, all of which expenses and fees shall constitute additional obligations secured by this Agreement. Secured Party may apply the Collateral against the obligations secured hereby in such order and manner as Secured Party may determine in its discretion subject, however, to the provisions of the Intercreditor Agreement. The Company shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay in full the Obligations secured hereby. Each Pledgor waives all rights of marshaling in respect of the Collateral.

2. Secured Party may cause any or all of the Collateral held by it to be transferred into the name of Secured Party or the name or names of Secured Party's nominee or nominees.

3. Secured Party may collect or receive all money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so.

4. Secured Party shall have the right, but shall not be obligated to, exercise or cause to be exercised all voting, consensual and other powers of ownership pertaining to the Collateral, and Pledgor shall deliver to Secured Party, if requested by Secured Party, irrevocable proxies with respect to the Collateral in form satisfactory to Secured Party.

5. Each Pledgor hereby acknowledges and confirms that Secured Party may be unable to effect a public sale of any or all of the Collateral by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and applicable state or foreign securities laws and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obligated to agree, among other things, to acquire any shares of the Collateral for their own respective accounts for investment and not with a view to distribution or resale thereof. Each Pledgor further acknowledges and confirms that any such private sale may result in prices or other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner, and Secured Party shall be under no obligation to take any steps in order to permit the Collateral to be sold at a public sale. Secured Party shall be under no obligation to delay a sale of any of the Collateral for any period of time necessary to permit any issuer thereof to register such Collateral for public sale under the Securities Act of 1933, as amended, or under applicable state or foreign securities laws.

VI.

Miscellaneous

A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Pledgors and Secured Party and their respective successors and assigns, except that no Pledgor may assign any of its rights or obligations under this Agreement without the prior written consent of the Lenders.

B. AMENDMENT; ENTIRE AGREEMENT; AMENDMENT AND RESTATEMENT. THIS AGREEMENT, THE INTERCREDITOR AGREEMENT AND THE OTHER FINANCING DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS (INCLUDING THE PRIOR PLEDGE AGREEMENT AND THE ORIGINAL PLEDGE AGREEMENT), REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. **This Agreement amends and restates the Prior Pledge Agreement in its entirety; provided, however, that the existing liens on and security interests in the Collateral under the Prior Pledge Agreement are hereby ratified, confirmed and continued and remain in full force and effect pursuant to the terms of this Agreement and are not extinguished.** The provisions of this Agreement may be amended or waived with the consent of the Required Lenders except as otherwise provided in the Intercreditor Agreement; provided that no

amendment, waiver or other modification shall without the consent of all the Lenders modify the terms of Section 3.07 or this Section 6.02.

C. Notices. All notices and other communications provided for in this Agreement shall be given or made in accordance with the Multiyear Credit Agreement.

D. GOVERNING LAW, JURISDICTION, ETC.

(a) **GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**

(b) **SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS SITTING IN DALLAS COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF TEXAS, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING 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 TEXAS 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 FINANCING DOCUMENT SHALL AFFECT ANY RIGHT THAT THE SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT AGAINST ANY PLEDGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(c) **WAIVER OF VENUE. EACH PLEDGOR 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 FINANCING 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 6.03. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

E. **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 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.

F. **Headings.** The headings, captions and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. **Counterparts.** This Agreement may be executed in any number of counterparts and on telecopy counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

H. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

I. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

J. **Release of Collateral.** The parties hereto acknowledge that Section 5.12 of the Intercreditor Agreement provides for release of the Collateral in certain specified circumstances.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

PLEDGORS:

LENNOX INTERNATIONAL INC.

By: _____
Susan K. Carter
Chief Financial Officer

SECURED PARTY:

BANK OF AMERICA, N.A., as Collateral Agent

By: _____
David A. Johanson
Vice President

Schedule 1
to
SECOND AMENDED AND RESTATED PLEDGE AGREEMENT

Section 1.01 (a) Collateral

Lennox International Inc.

Issuer	Ownership Interest	Number of Shares	Certificate Number	Percentage Ownership	Par Value (per share)
Armstrong Air Conditioning Inc.	Common Stock	1,030 shares	2, 3, 4, and 5	100%	\$1.00
Excel Comfort Systems Inc.	Common Stock	1,000 shares	1	100%	\$1.00
Lennox Industries Inc.	Common Stock	994,394 shares	C8195, C8196, C8197, C8198, C8199	100%	\$1.00
Service Experts Inc.	Common Stock	1,000 shares	1	100%	\$0.01
Lennox Global Ltd.	Common Stock	1,000 shares	1	100%	\$1.00

SCHEDULE 1 to Amended and Restated Pledge Agreement, Solo Page

Schedule 2
to
SECOND AMENDED AND RESTATED PLEDGE AGREEMENT

Collateral Pledged Under Section 1.01(b)

Lennox International Inc.

None.

SCHEDULE 2 to Amended and Restated Pledge Agreement, Solo Page

Schedule 3
to
SECOND AMENDED AND RESTATED PLEDGE AGREEMENT

Pledge Amendment

This Pledge Amendment, dated _____, ____ is delivered pursuant to Section 3.05 of the Pledge Agreement referred to below. The undersigned hereby agrees that this Pledge Amendment may be attached to the Second Amended and Restated Pledge Agreement dated as of July 8, 2005 among the undersigned and the other Pledgor(s) from time to time party thereto, if any, and **BANK OF AMERICA, N.A.**, as collateral agent, as secured party (the "**Pledge Agreement**", capitalized terms defined therein being used herein as therein defined). Schedule(s) 1 [and 2] of the Pledge Agreement is [are] hereby amended to add the property described below and the property listed on this Pledge Amendment shall be part of the Collateral and shall secure all obligations secured by the Pledge Agreement.

[_____]

By: _____

Name: _____

Title: _____

Schedule 1 Collateral

<u>Issuer</u>	<u>Ownership Interest</u>	<u>Number of Shares, Units or % Interest</u>	<u>Certificate Number</u>	<u>Par Value</u>
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Schedule 2 Collateral

<u>Issuer</u>	<u>Ownership Interest</u>	<u>Number of Shares, Units or % Interest</u>	<u>Certificate Number</u>	<u>Par Value</u>
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Schedule 4
to
SECOND AMENDED AND RESTATED PLEDGE AGREEMENT

Chief Executive Office and other Information

Lennox International Inc.

1. Chief Executive Office (Principal place of business and office where books and records kept):
2140 Lake Park Blvd.
Richardson, TX 75080
2. Jurisdiction of Incorporation: Delaware

SCHEDULE 4 to Amended and Restated Pledge Agreement, Solo Page

Schedule 5
to
SECOND AMENDED AND RESTATED PLEDGE AGREEMENT
SUBSIDIARY PLEDGOR JOINDER AGREEMENT

The undersigned (“**Pledgor**”) hereby agrees that this Subsidiary Pledgor Joinder Agreement dated as of _____, 200__ may be attached to the Second Amended and Restated Pledge Agreement dated as of July 8, 2005 among the undersigned and the other Pledgors from time to time party thereto, and **BANK OF AMERICA, N.A.**, as collateral agent, as secured party (the “**Pledge Agreement**”, capitalized terms defined therein being used herein as therein defined).

The Pledgor is required to execute this Subsidiary Pledgor Joinder Agreement pursuant to Section 5.21 the Multiyear Credit Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor hereby agrees as follows:

1. The Pledgor hereby assumes all the obligations of a “Pledgor” under the Pledge Agreement and agrees that it is a “Pledgor” and bound as a “Pledgor” under the terms of the Pledge Agreement as if it had been an original signatory thereto.

2. Schedule(s) 1 [and 2] of the Pledge Agreement is [are] hereby amended to add the property described below and the property listed on this Pledge Amendment shall be part of the Collateral and shall secure all obligations secured by the Pledge Agreement.

Schedule 1 Collateral

Issuer	Ownership Interest	Number of Shares, Units or % Interest	Certificate Number	Par Value
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Schedule 2 Collateral

Issuer	Ownership Interest	Number of Shares, Units or % Interest	Certificate Number	Par Value
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3. This Agreement shall be deemed to be part of, and a modification to, the Pledge Agreement and shall be governed by all the terms and provisions of the Pledge Agreement, which terms are incorporated herein by reference, are ratified and confirmed and shall be in full force and effect as valid and binding agreements of Pledgor enforceable against Pledgor.

IN WITNESS WHEREOF, the Pledgor has executed this Agreement as of the day and year first written above.

Pledgor:

By: _____
Name: _____
Title: _____

Lennox International renews and amends existing credit facility

(DALLAS, TX – July 11, 2005) — Lennox International Inc. (NYSE: LII) announced it has renewed and amended its revolving credit facility. The \$400 million facility has a maturity date of July 8, 2010. The facility is provided by a group of 18 banks, with Bank of America, N.A. and JPMorgan Chase Bank, N.A. acting as co-agents, and with Bank of America Securities LLC and J.P. Morgan Securities, Inc. acting as joint lead arrangers. LII will use the credit facility for general corporate purposes.

Operating in over 100 countries, Lennox International Inc. is a global leader in the heating, ventilation, air conditioning, and refrigeration markets. Lennox International stock is traded on the New York Stock Exchange under the symbol “LII.” Additional information is available at: <http://www.lennoxinternational.com> or by contacting Bill Moltner, vice president, investor relations, at 972-497-6670.

This news release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are subject to numerous risks and uncertainties that could cause actual results to differ materially from such statements. For information concerning these risks and uncertainties, see Lennox’ publicly available filings with the Securities and Exchange Commission. Lennox disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.