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As filed with the Securities and Exchange Commission on April 22, 2010

Registration Number 333-164590

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

Amendment No. 5
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

DOUGLAS DYNAMICS, INC.
(Exact name of Registrant as specified in its charter)

Delaware	**3531**	**134275891**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

7777 North 73rd Street
Milwaukee, Wisconsin 53223
(414) 354-2310
(Address, including zip code, and telephone number, including area code, of registrant's of principal executive offices)

James L. Janik
President and Chief Executive Officer
Douglas Dynamics, Inc.
7777 North 73rd Street
Milwaukee, Wisconsin 53223
(414) 354-2310
(Name, address and telephone number, including area code, of agent for service)

Copies to:

Bruce D. Meyer **Ari B. Lanin** **Gibson, Dunn & Crutcher LLP** **333 South Grand Avenue** **Los Angeles, CA 90071** **(213) 229-7000**	**Gregg A. Noel** **Skadden, Arps, Slate, Meagher & Flom LLP** **300 South Grand Avenue** **Los Angeles, CA 90071** **(213) 687-5000**

As soon as practicable after this Registration Statement becomes effective.
(Approximate date of commencement of proposed sale to the public)

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	**Amount to be Registered(1)**	**Proposed Maximum Aggregate Offering Price(2)**	**Amount of Registration Fee**
Common Stock, $.01 par value	11,500,000	$184,000,000	$13,119.20(3)

(1) Includes 1,500,000 shares that the underwriters have the option to purchase to cover overallotments, if any.
(2) Estimated solely for the purpose of computing the amount of the registration fee, in accordance with Rule 457(a) promulgated under the Securities Act of 1933.
(3) Previously paid.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

EXPLANATORY NOTE

This Amendment No. 5 to the Registration Statement on Form S-1 of Douglas Dynamics, Inc. (File No. 333- 164590) is being filed solely to file the exhibits listed in the exhibit index hereto as being "Filed herewith."

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The table below lists various expenses, other than underwriting discounts and commissions, we expect to incur in connection with the sale and distribution of the securities being registered hereby. All the expenses are estimates, except the Securities and Exchange ("SEC") registration fee, the Financial Industry Regulatory Authority ("FINRA") filing fee and the New York Stock Exchange ("NYSE") listing fee. All such expenses will be borne by the Company; none of the expenses will be borne by the selling stockholders.

Type	Amount
SEC Registration Fee	$ 13,119.20
FINRA Filing Fee	18,900
NYSE Fee	*
Legal fees and expenses	*
Accounting fees and expenses	*
Printing and engraving expenses	*
Transfer agent and registrar fees	*
Miscellaneous expenses	*
Total	$ *

* To be filed by amendment

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 102 of the Delaware General Corporation Law ("DGCL"), allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The certificate of incorporation that we plan to adopt prior to the consummation of this offering (such certificate of incorporation being "our new certificate of incorporation") will include a provision that eliminates the personal liability of our directors for monetary damages to the extent permitted by Section 102 of the DGCL.

Section 145 of the DGCL provides for the indemnification of officers, directors and other corporate agents in terms sufficiently broad to indemnify such persons under circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended (the "Securities Act").

The bylaws that we intend to adopt prior to the consummation of this offering (such bylaws being "our new bylaws") will provide for indemnification of our officers, directors, employees and agents to the extent and under the circumstances permitted under the DGCL.

In addition to the indemnification to be provided by our new bylaws, prior to the consummation of this offering, we will enter into agreements to indemnify our directors and executive officers. These agreements, subject to certain exceptions, will require us to, among other things, indemnify these directors and executive officers for certain expenses, including attorney fees, witness fees and expenses, expenses of accountants and other advisors, and the premium, security for and other costs relating to any bond, arising out of that person's services as a director or officer of us or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

The Underwriting Agreement to be filed as Exhibit 1.1 will provide for indemnification by the underwriters of us, our directors and officers, and by us of the underwriters, for some liabilities arising under the Securities Act, and affords some rights of contribution with respect thereto.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES.

In the three years preceding the filing of this registration statement, we have issued the following securities that were not registered under the Securities Act. The following share numbers and dollar amounts do not give effect to the 23.75 for-one stock split of our common stock that will occur prior to the consummation of this offering.

- Since August 15, 2007, certain of our executive officers and former executive officers exercised options granted pursuant to the Douglas Dynamics, Inc. 2004 Stock Incentive Plan to purchase an aggregate of 8,875 shares of our common stock at an exercise price of $100 per share. Certain of our executive officers and former executive officers delivered a promissory note and pledge and security agreement to the company in respect of the aggregate exercise price of such options. See "Certain Relationships and Related Party Transactions—Promissory Notes / Pledge and Security Agreements."

The sales of the above securities were exempt from registration under the Securities Act in reliance on Rule 701 promulgated under Section 3(b) of the Securities Act as transactions pursuant to benefit plans and contracts relating to compensation.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

Exhibit Number	Title
1.1*	Form of Underwriting Agreement.
3.1#	Third Amended and Restated Certificate of Incorporation of Douglas Dynamics, Inc., as currently in effect.
3.2#	Amendment to Third Amended and Restated Certificate of Incorporation of Douglas Dynamics, Inc., as currently in effect.
3.3*	Form of Fourth Amended and Restated Certificate of Incorporation of Douglas Dynamics, Inc., to be in effect upon consummation of this offering.
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3.5#	First Amendment to Amended and Restated Bylaws of Douglas Dynamics, Inc., as currently in effect.
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4.1#	Form of Common Stock Certificate.
4.2#	Indenture, dated as of December 16, 2004, among Douglas Dynamics, L.L.C., Douglas Dynamics Finance Company, Douglas Dynamics, Inc. and U.S. Bank National Association.
4.3#	First Supplemental Indenture, dated as of June 28, 2005, among Fisher, LLC, Douglas Dynamics, L.L.C., Douglas Dynamics Finance Company, Douglas Dynamics, Inc. and U.S. Bank National Association.
4.4#	Form of Global Note for Douglas Dynamics, L.L.C. and Douglas Dynamics Finance Company 7 3/4% senior notes due 2012.

Exhibit Number	Title
4.5#	Form of Douglas Holdings, Inc. Guarantee for Douglas Dynamics, L.L.C. and Douglas Dynamics Finance Company $7\frac{3}{4}$% senior notes due 2012.
5.1#	Opinion of Gibson, Dunn & Crutcher LLP.
10.1*	Amendment No. 2 to Senior Secured Term Credit and Guaranty Agreement, dated as of April 16, 2010 by and among Douglas Dynamics, L.L.C. and each of the lenders party thereto (including as Exhibit A thereto Senior Secured Term Credit and Guaranty Agreement, dated as of May 21, 2007, by and among Douglas Dynamics, Inc., Douglas Dynamics, L.L.C., Fisher, LLC and Douglas Dynamics Finance Company, the banks and financial institutions party thereto and Credit Suisse, Cayman Islands Branch as administrative agent as amended by Amendment No. 1, dated as of December 19, 2008 and Amendment No. 2, dated as of April 16, 2010).
10.2*	Exhibits and Schedules to Senior Secured Term Credit and Guaranty Agreement, dated as of May 21, 2007, by and among Douglas Dynamics, Inc., Douglas Dynamics, L.L.C., Fisher, LLC and Douglas Dynamics Finance Company, the banks and financial institutions party thereto and Credit Suisse, Cayman Islands Branch as administrative agent as amended by Amendment No. 1, dated as of December 19, 2008 and Amendment No. 2, dated as of April 16, 2010.
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10.5#	Employment Agreement between Robert McCormick and Douglas Dynamics, Inc., dated September 7, 2004, as amended by that certain amendment, dated as of October 1, 2008.
10.6#	Form of Amendment No. 2 to Employment Agreement between Robert McCormick and Douglas Dynamics, Inc.
10.7#	Employment Agreement between James L. Janik and Douglas Dynamics, Inc., dated March 30, 2004.
10.8#	Form of Amendment No. 1 to Employment Agreement between James L. Janik and Douglas Dynamics, Inc.
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10.34*	Alternative Form of Restricted Stock Agreement under Douglas Dynamics, Inc. 2010 Stock Incentive Plan.
10.35*	Form of Restricted Stock Units Agreement under Douglas Dynamics, Inc. 2010 Stock Incentive Plan.
10.36*	Form of Nonqualified Stock Option Agreement under Douglas Dynamics, Inc. 2010 Stock Incentive Plan.
10.37*	Form of Incentive Stock Option Agreement under 2010 Stock Incentive Plan.
10.38#	Second Amended and Restated Securityholders Agreement among Douglas Dynamics, Inc. and certain of its stockholders, optionholders and warrantholders, dated June 30, 2004.
10.39#	First Amendment to Second Amended and Restated Securityholders Agreement among Douglas Dynamics, Inc. and certain of its stockholders, optionholders and warrantholders, dated December 27, 2004.
10.40**	Form of Second Amendment to Second Amended and Restated Securityholders Agreement among Douglas Dynamics, Inc. and certain of its stockholders, optionholders and warrantholders.
10.41#	Amended and Restated Joint Management Services Agreement among Douglas Dynamics, Inc., Douglas Dynamics, L.L.C., Aurora Management Partners LLC and ACOF Management, L.P. dated as of April 12, 2004.
10.42#	Form of Second Amended and Restated Joint Management Services Agreement among Douglas Dynamics, Inc., Douglas Dynamics, L.L.C., Aurora Management Partners LLC, and ACOF Management, L.P.
10.43#	Form of Director and Officer Indemnification Agreement.
21.1#	Subsidiaries of Douglas Dynamics, Inc.
23.1#	Consent of Gibson, Dunn & Crutcher, LLP (included as part of Exhibit 5.1)
23.2#	Consent of Ernst & Young LLP.
24.1#	Power of Attorney (included on signature page of Registration Statement hereto).

* Filed herewith

** To be filed by amendment

\# Previously filed

ITEM 17. UNDERTAKINGS.

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, or the Act, may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the

event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(a) For purposes of determining any liability under the Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(b) For the purpose of determining any liability under the Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(c) For the purpose of determining liability under the Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use; and

(d) For the purpose of determining liability of the registrant under the Act to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

i. Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

ii. Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

iii. The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

iv. Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Amendment No. 5 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Milwaukee, Wisconsin, on April 22, 2010.

DOUGLAS DYNAMICS, INC.

By: /s/ JAMES L. JANIK

James L. Janik
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, the following persons have signed this Amendment No. 5 to Registration Statement in the capacities and on the date indicated.

Signature	Title	Date
* James L. Janik	President and Chief Executive Officer (Principal Executive Officer) and Director	April 22, 2010
* Robert McCormick	Vice President and Chief Financial Officer (Principal Financial Officer)	April 22, 2010
* Robert Young	Controller	April 22, 2010
* Mark Rosenbaum	Director	April 22, 2010
* Michael Marino	Director	April 22, 2010
* Jack O. Peiffer	Director	April 22, 2010
* Michael W. Wickham	Director	April 22, 2010
* Nav Rahemtulla	Director	April 22, 2010
* Jeffrey Serota	Director	April 22, 2010

*By: /s/ JAMES L. JANIK

James L. Janik
Attorney-in-Fact

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SIGNATURES
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Exhibit 1.1

FORM OF UNDERWRITING AGREEMENT

[ ] Shares

DOUGLAS DYNAMICS, INC.

Common Stock

UNDERWRITING AGREEMENT

[ ], 2010

CREDIT SUISSE SECURITIES (USA) LLC
OPPENHEIMER & CO. INC.,
As Representatives of the Several Underwriters,
c/o Credit Suisse Securities (USA) LLC
Eleven Madison Avenue,
New York, N.Y. 10010-3629

Dear Sirs:

1. *Introductory*. Douglas Dynamics, Inc., a Delaware corporation ("**Company**") agrees with the several Underwriters named in Schedule A hereto ("**Underwriters**") to issue and sell to the Underwriters **[ ]** shares of its common stock, par value $0.01 per share ("**Securities**"), and the stockholders listed in Schedule B hereto ("**Selling Stockholders**") agree severally with the Underwriters to sell to the Underwriters an aggregate of **[ ]** outstanding shares of the Securities (such **[ ]** shares of Securities being hereinafter referred to as the "**Firm Securities**"). Certain of the Selling Stockholders also agree to sell to the Underwriters, at the option of the Underwriters, an aggregate of not more than **[ ]** additional outstanding shares of the Securities (such additional shares collectively, the "**Optional Securities**"), as set forth below. The Firm Securities and the Optional Securities are herein collectively called the "**Offered Securities**". As part of the offering contemplated by this Agreement, Credit Suisse Securities (USA) LLC (the "**Designated Underwriter**" or "**Credit Suisse**") has agreed to reserve out of the Firm Securities purchased by it under this Agreement, up to **[ ]** shares, for sale to the Company's directors, officers, employees and other parties associated with the Company (collectively, "**Participants**"), as set forth in the Final Prospectus (as defined herein) under the heading "Underwriting" (the "**Directed Share Program"**). The Firm Securities to be sold by the Designated Underwriter pursuant to the Directed Share Program (the "**Directed Shares"**) will be sold by the Designated Underwriter pursuant to this Agreement at the public offering price. Any Directed Shares not subscribed for by the end of the business day on which this Agreement is executed will be offered to the public by the Underwriters as set forth in the Final Prospectus.

2. *Representations and Warranties of the Company and the Selling Stockholders.* (a) The Company represents and warrants to, and agrees with, the several Underwriters that:

(i) *Filing and Effectiveness of Registration Statement; Certain Defined Terms.* The Company has filed with the Commission a registration statement on Form S-1 (No. 333-164590) covering the registration of the Offered Securities under the Act, including a related preliminary prospectus or prospectuses. At any particular time, this initial registration statement, in the form then on file with the Commission, including all information contained in the registration statement (if any) pursuant to Rule 462(b) and then deemed to be a part of the initial registration statement, and all 430A Information and all 430C Information, that in any case has not then been superseded or

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modified, shall be referred to as the "**Initial Registration Statement**". The Company may also have filed, or may file with the Commission, a Rule 462(b) registration statement covering the registration of Offered Securities. At any particular time, this Rule 462(b) registration statement, in the form then on file with the Commission, including the contents of the Initial Registration Statement incorporated by reference therein and including all 430A Information and all 430C Information, that in any case has not then been superseded or modified, shall be referred to as the "**Additional Registration Statement**".

As of the time of execution and delivery of this Agreement, the Initial Registration Statement has been declared effective under the Act and is not proposed to be amended. Any Additional Registration Statement has or will become effective upon filing with the Commission pursuant to Rule 462(b) and is not proposed to be amended. No stop order suspending the effectiveness of the Initial Registration Statement or any Additional Registration Statement has been issued under the Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are threatened by the Commission. The Offered Securities all have been or will be duly registered under the Act pursuant to the Initial Registration Statement and, if applicable, the Additional Registration Statement.

For purposes of this Agreement:

"**430A Information**", with respect to any registration statement, means information included in a prospectus and retroactively deemed to be a part of such registration statement pursuant to Rule 430A(b).

"**430C Information**", with respect to any registration statement, means information included in a prospectus then deemed to be a part of such registration statement pursuant to Rule 430C.

"**Act**" means the Securities Act of 1933, as amended.

"**Applicable Time**" means **[ ]**:00 [a/p]m (Eastern time) on the date of this Agreement.

"**Closing Date"** has the meaning defined in Section 3 hereof.

"**Commission**" means the Securities and Exchange Commission.

"**Effective Time**" with respect to the Initial Registration Statement or, if filed prior to the execution and delivery of this Agreement, the Additional Registration Statement means the date and time as of which such Registration Statement was declared effective by the Commission or has become effective upon filing pursuant to Rule 462(c). If an Additional Registration Statement has not been filed prior to the execution and delivery of this Agreement but the Company has advised the Representatives that it proposes to file one, "**Effective Time**" with respect to such Additional Registration Statement means the date and time as of which such Registration Statement is filed and becomes effective pursuant to Rule 462(b).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Final Prospectus**" means the Statutory Prospectus that discloses the public offering price, other 430A Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Act.

"**General Use Issuer Free Writing Prospectus**" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being so specified in Schedule C to this Agreement.

"**Issuer Free Writing Prospectus**" means any "issuer free writing prospectus," as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

"**Limited Use Issuer Free Writing Prospectus**" means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

The Initial Registration Statement and the Additional Registration Statement are referred to collectively as the "**Registration Statements**" and individually as a "**Registration Statement**". A "**Registration Statement**" with reference to a particular time means the Initial Registration Statement and any Additional Registration Statement as of such time. A "**Registration Statement**" without reference to a time means such Registration Statement as of its Effective Time. For purposes of the foregoing definitions, 430A Information with respect to a Registration Statement shall be considered to be included in such Registration Statement as of the time specified in Rule 430A.

"**Rules and Regulations**" means the rules and regulations of the Commission.

"**Securities Laws**" means, collectively, the Sarbanes-Oxley Act of 2002 ("**Sarbanes-Oxley**"), the Act, the Exchange Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of "issuers" (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, to the extent such rules are applicable to the Company, the rules of the New York Stock Exchange and the NASDAQ Stock Market ("**Exchange Rules**").

"**Statutory Prospectus**" with reference to a particular time means the prospectus included in a Registration Statement immediately prior to that time, including any 430A Information or 430C Information with respect to such Registration Statement. For purposes of the foregoing definition, 430A Information shall be considered to be included in the Statutory Prospectus as of the actual time that form of prospectus is filed with the Commission pursuant to Rule 424(b) or Rule 462(c) and not retroactively.

Unless otherwise specified, a reference to a "rule" is to the indicated rule under the Act.

(ii) *Compliance with Securities Act Requirements*. (i) (A) At their respective Effective Times, (B) on the date of this Agreement and (C) on each Closing Date, each of the Initial Registration Statement and the Additional Registration Statement (if any) conformed and will conform in all material respects to the requirements of the Act and the Rules and Regulations and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) on its date, at the time of filing of the Final Prospectus pursuant to Rule 424(b) or (if no such filing is required) at the Effective Time of the Additional Registration Statement in which the Final Prospectus is included, and on each Closing Date, the Final Prospectus will conform in all respects to the requirements of the Act and the Rules and Regulations and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (iii) on the date of this Agreement, at their respective Effective Times or issue dates and on each Closing Date, each Registration Statement, the Final Prospectus, any Statutory Prospectus, any prospectus wrapper and any Issuer Free Writing Prospectus complied or comply, and such documents and any further amendments or supplements thereto will comply, with any applicable laws or regulations of foreign jurisdictions in which the Final Prospectus, any Statutory Prospectus, any prospectus wrapper or any Issuer Free Writing Prospectus, as amended or supplemented, if applicable, are distributed in connection with the Directed Share Program. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 9(c) hereof.

(iii) *Ineligible Issuer Status.* (i) At the time of the initial filing of the Initial Registration Statement and (ii) at the date of this Agreement, the Company was not and is not an "ineligible issuer," as defined in Rule 405, including (x) the Company or any subsidiary of the Company in the preceding three years not having been convicted of a felony or misdemeanor or having been made the subject of a judicial or administrative decree or order as described in Rule 405 and (y) the Company in the preceding three years not having been the subject of a bankruptcy petition or insolvency or similar proceeding, not having had a registration statement be the subject of a

proceeding under Section 8 of the Act and not being the subject of a proceeding under Section 8A of the Act in connection with the offering of the Offered Securities, all as described in Rule 405.

(iv) *General Disclosure Package*. As of the Applicable Time, neither (i) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time, the preliminary prospectus, dated , 2010 (which is the most recent Statutory Prospectus distributed to investors generally) and the other information, if any, stated in Schedule C to this Agreement to be included in the General Disclosure Package, all considered together (collectively, the "**General Disclosure Package**"), nor (ii) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the General Disclosure Package or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 9(c) hereof.

(v) *Issuer Free Writing Prospectuses*. Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies Credit Suisse as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (i) the Company has promptly notified or will promptly notify Credit Suisse and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(vi) *Good Standing of the Company.* The Company has been duly incorporated and is existing and in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and the Company is duly

qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not, individually or in the aggregate, result in a material adverse effect on the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole ("**Material Adverse Effect**").

(vii) *Subsidiaries.* Each subsidiary of the Company has been duly organized or incorporated and is existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and each such subsidiary of the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification except where the failure to be so qualified would not, individually or in the aggregate, result in a Material Adverse Effect; all of the issued and outstanding capital stock of each subsidiary of the Company has been duly authorized and validly issued and is fully paid and nonassessable; and the capital stock of each subsidiary owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects. Except as disclosed in the General Disclosure Package, no subsidiary of the Company is subject to any restrictions on its ability to pay dividends or make distributions

permitted by applicable law on any capital stock of such subsidiary. Schedule D hereto contains a true and complete list of all direct and indirect subsidiaries of the Company. Douglas Dynamics, L.L.C., a Delaware limited liability company, is the only "significant subsidiary" of the Company, as such term is defined in Rule 1-02 under Regulation S-X.

(viii) *Offered Securities.* The Offered Securities and all other outstanding shares of capital stock of the Company have been duly authorized; the authorized equity capitalization of the Company is as set forth in the General Disclosure Package; all outstanding shares of capital stock of the Company are, and, when the Offered Securities have been delivered and paid for in accordance with this Agreement on each Closing Date, such Offered Securities will have been, validly issued, fully paid and nonassessable, will conform in all material respects to the description of such Offered Securities contained in the General Disclosure Package and Final Prospectus; the stockholders of the Company have no preemptive rights with respect to the Securities; and none of the outstanding shares of capital stock of the Company have been issued in violation of any preemptive or similar rights of any security holder.

(ix) *No Finder's Fee.* Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with this offering.

(x) *Registration Rights.* Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act. (collectively, "registration rights"), and any person to whom the Company has granted registration rights has agreed not to exercise such rights until after the expiration of the Lock-Up Period referred to in Section 5(k) hereof.

(xi) *Listing.* The Offered Securities have been approved for listing on The New York Stock Exchange, subject to notice of issuance.

(xii) *Absence of Further Requirements.* No consent, approval, authorization, or order of, or filing or registration with, any person (including any governmental agency or body or any court) is required to be obtained or made by the Company for the consummation of the transactions contemplated by this Agreement in connection with the sale of the Offered Securities, except (x) such as have been obtained, or made, prior to the Closing Date, (y) for those as to which the failure to obtain or make would not, individually or in the aggregate, have an adverse effect on the ability of the Company to execute, deliver and perform this Agreement and the transactions contemplated herein, including the sale of the Offered Securities, and (z) such as may be required under state securities laws. No authorization, consent, approval, license, qualification or order of, or filing or registration with any person (including any governmental agency or body or any court) in any foreign jurisdiction is required for the consummation of the transactions contemplated by this Agreement in connection with the offering, issuance and sale of the Directed Shares under the laws and regulations of such jurisdiction except such as have been obtained, or made, prior to the Closing Date, (y) for those as to which the failure to obtain or make would not, individually or in the aggregate, have an adverse effect on the ability of the Company to execute, deliver and perform this Agreement and consummate the sale of the Directed Shares, and (z) such as may be required under state securities laws.

(xiii) *Title to Property.* Except as disclosed in the General Disclosure Package, the Company and its subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, charges, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by

them and, except as disclosed in the General Disclosure Package, the Company and its subsidiaries hold any leased real or personal property under valid and enforceable leases with no terms or provisions that would individually or in the aggregate, have a Material Adverse Effect.

(xiv) *Absence of Defaults and Conflicts Resulting from Transaction.* The execution, delivery and performance of this Agreement as disclosed in the General Disclosure Package, and the issuance and sale of the Offered Securities as disclosed in the General Disclosure Package will not result in a breach or violation of any of the terms and provisions of, or constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, (i) the charter or by-laws of the Company or any of its subsidiaries, (ii) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their properties, or (iii) any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the properties of the Company or any of its subsidiaries is subject, except, with respect to clauses (ii) and (iii) above, for such breaches, violations or defaults or such liens, charges and encumbrances which would not, individually or in the aggregate, have a Material Adverse Effect; a "**Debt Repayment Triggering Event**" means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture, or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(xv) *Absence of Existing Defaults and Conflicts.* Neither the Company nor any of its subsidiaries is (i) in violation of its respective charter, by-laws, limited liability company agreement or certificate of formation, as applicable, or (ii) in default (or with the giving of notice or lapse of time would be in default) under any existing obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument to which any of them is a party or by which any of them is bound or to which any of the properties of any of them is subject, except such defaults that would not, individually or in the aggregate, result in a Material Adverse Effect.

(xvi) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(xvii) *Possession of Licenses and Permits.* The Company and its subsidiaries (a) possess, and are in compliance, in all material respects, with the terms of, all adequate certificates, authorizations, franchises, licenses and permits ("**Licenses**") necessary or material to the conduct of the business now conducted by them and

have not received any notice of proceedings relating to the revocation or modification of any Licenses that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect and (b) will possess when necessary and be in compliance with, in all material respects, all Licenses necessary or material to the conduct of the business proposed to be conducted by them in the General Disclosure Package.

(xviii) *Absence of Labor Dispute.* No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that would reasonably be expected to have a Material Adverse Effect.

(xix) *Employee Benefits*. (i) The Company and each of its subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("**ERISA**"); (ii) no "reportable event" (as defined in ERISA), other than events for which the 30-day notice period has been waived, has occurred within the past six years with respect to any "employee benefit plan" (as defined in ERISA) for which the Company or any of its subsidiaries or ERISA Affiliates would have any liability; (iii) the Company and each of its subsidiaries or their ERISA Affiliates have not incurred within the past

six years and do not reasonably expect to incur liability under Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan"; and (iv) each "employee benefit plan" for which the Company and each of its subsidiaries or any of their ERISA Affiliates would have any liability that is intended to be qualified under Section 401(a) of the United States Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (collectively the "**Code**") is so qualified and nothing has occurred, whether by action or by failure to act, which would reasonably be expected to result in the loss of such qualification; except, in each case, as would not reasonably be expected to have a Material Adverse Effect. "**ERISA Affiliate**" means, with respect to the Company or any of its subsidiaries, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Code of which the Company or such subsidiary is a member.

(xx) *Intellectual Property*. The Company and its subsidiaries own, possess, or have obtained valid and enforceable licenses to use sufficient trademarks, trade names, patent rights, copyrights, domain names, trade secrets, technology, know-how, and other intellectual property rights and similar rights, including registrations and applications therefor (collectively, "**Intellectual Property Rights**") necessary to conduct the business described in the General Disclosure Package in all material respects, other than trademarks, patent rights, copyrights and trade secrets of third parties that the Company infringes or has infringed in the conduct of its business to the extent that the Company does not have knowledge of such infringement. Except as disclosed in the General Disclosure Package, to the knowledge of the Company: (i) there has been no infringement, misappropriation, or other violation by third parties of any of the Intellectual Property Rights of the Company or its subsidiaries; (ii) there has been no infringement, misappropriation, or other violation by the Company or its subsidiaries of any of the Intellectual Property Rights of third parties; (iii) there is no pending or threatened action, suit, proceeding, or claim by third parties challenging the validity, enforceability, or scope of any Intellectual Property Rights owned by the Company or its subsidiaries; and (iv) there is no pending or threatened action, suit, proceeding, or claim by others challenging the Company's or any subsidiary's rights in or to, or violation of any of the terms with respect to their Intellectual Property Rights.

(xxi) *Environmental Laws*. Except as disclosed in the General Disclosure Package, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "**environmental laws**"), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect, and neither the Company nor any of its subsidiaries is aware of any pending investigation which would lead to such a claim.

(xxii) *Accurate Disclosure.* The statements in the General Disclosure Package and the Final Prospectus under the headings "Prospectus Summary—Contemplated Financing Transactions in Connection with this Offering," "Dividend Policy and Restrictions," "Description of Indebtedness," "Description of Capital Stock" and "Certain United States Federal Income Tax Considerations" insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate in all material respects and fair summaries of such legal matters, agreements, documents or proceedings and present the information required to be shown.

(xxiii) *Absence of Manipulation.* The Company has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(xxiv) *Statistical and Market-Related Data.* Any third-party statistical and market-related data

included in a Registration Statement, a Statutory Prospectus or the General Disclosure Package are based on or derived from sources that the Company believes to be reliable and accurate.

(xxv) *Internal Controls and Compliance with the Sarbanes-Oxley Act.* Except as set forth in the General Disclosure Package, the Company is in compliance with Sarbanes-Oxley and the rules and regulations thereunder to the extent they apply to the Company. The Company will maintain, when required under Sarbanes-Oxley and the rules and regulations thereunder, a system of internal controls, including, but not limited to, disclosure controls and procedures, internal controls over accounting matters and financial reporting, an internal audit function and legal and regulatory compliance controls (collectively, "**Internal Controls**") that comply with the Securities Laws and are sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. General Accepted Accounting Principles and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Internal Controls will be overseen by the Audit Committee (the "**Audit Committee**") of the Board in the manner and at the time required by the Exchange Rules. The Company has not publicly disclosed or reported to the Audit Committee or the Board, and within the next 135 days the Company does not reasonably expect to publicly disclose or report to the Audit Committee or the Board, a significant deficiency, material weakness, change in Internal Controls or fraud involving management or other employees who have a significant role in Internal Controls (each, an "**Internal Control Event**"), any violation of, or failure to comply with, the Securities Laws, or any matter which, if determined adversely, would have a Material Adverse Effect.

(xxvi) *Litigation*. Except as disclosed in the General Disclosure Package, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company, any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement, or which are otherwise material in the context of the sale of the Offered Securities; and no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are threatened or, to the Company's knowledge, contemplated.

(xxvii) *Financial Statements.* The financial statements included in each Registration Statement and the General Disclosure Package present fairly in all material

respects the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and, such financial statements have been prepared in conformity with the generally accepted accounting principles in the United States applied on a consistent basis. No other financial statements or schedules of the Company or any of its subsidiaries are required by the Act or the Rules and Regulations to be included in the Registration Statement, the General Disclosure Package or the Prospectus.

(xxviii) *No Material Adverse Change in Business.* Except as disclosed in the General Disclosure Package, since the end of the period covered by the latest audited financial statements included in the General Disclosure Package (i) there has been no change, nor any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries, taken as a whole, that is material and adverse, (ii) except as disclosed in or contemplated by the General Disclosure Package, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock and (iii) except as disclosed in or contemplated by the General Disclosure Package, there has been no material adverse change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company and its subsidiaries.

(xxix) *Investment Company Act.* The Company is not and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the General Disclosure Package, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended (the "**Investment Company Act**").

(xxx) *Ratings.* No "nationally recognized statistical rating organization" as such term is defined for purposes of Rule 436(g)(2) (i) has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering any of the actions described in Section 8(c)(ii) hereof.

(xxxi) *No Unlawful Payments.* Neither the Company nor any of its subsidiaries nor any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) made any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(xxxii) *Compliance with Money Laundering Laws.* The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes, and any applicable rules and regulations thereunder, issued, administered or enforced by an appropriate governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xxxiii) *Compliance with OFAC.* None of the Company, any of its subsidiaries or any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any penalties, investigations, or enforcement actions related to U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"); and the Company will not, directly or indirectly, use the proceeds of the offering of the Offered Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxxiv) *Insurance*. (i) The Company and its subsidiaries are insured by insurers against such losses and risks and in such amounts as are customary and that the Company reasonably considers adequate for the business in which they are engaged; (ii) to the Company's knowledge, all material policies of insurance and fidelity or surety bonds insuring the Company or any of its subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect, and the Company believes such policies and bonds are appropriate; (iii) to the Company's knowledge, the Company and its subsidiaries are in compliance with the terms of such policies and instruments in all material respects; and (iv) the Company has no reason to believe that it will not be able to renew or replace on comparable terms its existing material insurance coverage.

(xxxv) *Absence of Unlawful Influence.* The Company has not offered or sold, or caused the Underwriters to offer or sell, any Offered Securities to any person pursuant to the Directed Share Program with the specific intent to unlawfully influence (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company or (ii) a trade journalist or publication to write or publish favorable information about the Company or its products.

(xxxvi) *Taxes*. The Company and its subsidiaries have filed all federal, state, local and non-U.S. tax returns that are required to be filed or have requested extensions thereof (except in any case in which the failure so to file would not have a Material Adverse Effect); and, except as set forth in the General Disclosure Package, the Company and its subsidiaries have paid all taxes (including any assessments, fines or penalties) required to be paid by them, except for any such taxes, assessments, fines or penalties currently being contested in good faith or as would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Each Selling Stockholder severally and not jointly represents and warrants to, and agrees with, the several Underwriters that:

(i) *Title to Securities.* Such Selling Stockholder has and on each Closing Date hereinafter mentioned will have valid and unencumbered title to the Offered Securities to be delivered by such Selling Stockholder on such Closing Date, except for such encumbrances disclosed in writing to the Representatives prior to the date of this Agreement that will be removed on or prior to the Closing Date, and full right, power and authority to enter into this Agreement and to sell, assign, transfer and deliver the Offered Securities to be delivered by such Selling Stockholder on such Closing Date hereunder; and upon the delivery of and payment for the Offered Securities on each Closing Date hereunder the several Underwriters will acquire valid and unencumbered title to the Offered Securities to be delivered by such Selling Stockholder on such Closing Date.

(ii) *Absence of Further Requirements.* No consent, approval, authorization or order of, or filing with, any person (including any governmental agency or body or any court) is required to be obtained or made by such Selling Stockholder for the consummation of the transactions contemplated by the Custody Agreement, the Power of Attorney (if executed by such Selling Stockholder) or this Agreement in connection with the offering and sale of the Offered Securities sold by such Selling Stockholder, except (i) such as have been obtained and made under the Act, (ii) such as may be required under state securities laws and (iii) those as to which the failure to obtain or make would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Selling Stockholder to execute, deliver and perform the transactions contemplated herein, including the sale of Offered Securities by such Selling Stockholder.

(iii) *Absence of Defaults and Conflicts Resulting from Transaction.* The execution, delivery and performance of the Custody Agreement, the Power of Attorney (if executed by such Selling Stockholder) and this Agreement and the consummation of the transactions contemplated therein and herein will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of such Selling Stockholder pursuant to, (i) the charter or by-laws of such Selling Stockholder that is a corporation or the constituent documents of such Selling Stockholder that is not a natural person or a corporation, (ii) any statute, rule, regulation or order of any governmental agency or body or any court having jurisdiction over such Selling Stockholder or any of its properties, or (iii) any agreement or instrument to which such Selling Stockholder is a party or by which such Selling Stockholder is bound or to which any of the properties of such Selling Stockholder is subject, except, in the cases of clauses (ii) and (iii) above, for any breaches,

violations, defaults, liens, charges or encumbrances that would not, individually or in the aggregate, have a material adverse effect on such Selling Stockholder or materially and adversely affect the ability of such Selling Stockholder to perform its obligations hereunder and under the Power of Attorney (if executed by such Selling Stockholder) and related Custody Agreement or to consummate the transactions contemplated herein, including the sale of Offered Securities by such Selling Stockholder.

(iv) *Custody Agreement*. The Power of Attorney (if executed by such Selling Stockholder) and related Custody Agreement with respect to such Selling Stockholder has been duly authorized, executed and delivered by such Selling Stockholder and constitute valid and legally binding obligations of such Selling Stockholder enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(v) *Compliance with Securities Act Requirements*. (i) (A) At their respective Effective Times, (B) on the date of this Agreement and (C) on each Closing Date, each of the Initial Registration Statement and the Additional Registration Statement (if any) did not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) on its date, at the time of filing of the Final Prospectus pursuant to Rule 424(b) or (if no such filing is required) at the Effective Time of the Additional Registration Statement in which the Final Prospectus is included, and on each Closing Date, the Final Prospectus will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (iii) as of the Applicable Time, neither (x) the General Disclosure Package nor (y) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The preceding sentence applies only to statements in or omissions from any such document in reliance upon and in conformity with written information furnished to the Company by such Selling Stockholder specifically for use therein, it being understood and agreed that the only such information consists of information with respect to such Selling Stockholder that appears in the table and corresponding footnotes thereto (excluding any percentages) under the caption "Principal and Selling Stockholders" in the Prospectus and the General Disclosure Package (the "**Selling Stockholder Information**").

(vi) *No Undisclosed Material Information*. The sale of the Offered Securities by such Selling Stockholder pursuant to this Agreement is not prompted by any material information concerning the Company or any of its subsidiaries that is not set forth the General Disclosure Package.

(vii) *Authorization of Agreement.* This Agreement, the Custody Agreement and the Power of Attorney have been duly authorized, executed and delivered by such Selling Stockholder.

(viii) *No Finder's Fee.* Except as disclosed in the General Disclosure Package or as contemplated by this Agreement, there are no contracts, agreements or understandings between such Selling Stockholder and any person that would give rise to a valid claim against such Selling Stockholder or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with this offering.

(ix) *Absence of Manipulation.* Such Selling Stockholder has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(x) *Good Standing of Selling Stockholder.* To the extent such Selling Stockholder is an entity, such Selling Stockholder is validly existing and, to the extent such concept exists in the relevant jurisdiction, in good standing under the laws of the jurisdiction of its organization.

(xi) *No Distribution of Offering Material*. Such Selling Stockholder has not distributed and will not distribute any prospectus or other offering material in connection with the offering and sale of the Offered Securities.

3. *Purchase, Sale and Delivery of Offered Securities*. On the basis of the representations, warranties and agreements and subject to the terms and conditions set forth herein, the Company and each Selling Stockholder agree, severally and not jointly, to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company and each such Selling Stockholder, at a purchase price of $**[ ]** per share, that number of Firm Securities (rounded up or down, as determined by Credit Suisse in its discretion, in order to avoid fractions) obtained by multiplying **[ ]** Firm Securities in the case of the Company and the number of Firm Securities set forth opposite the name of such Selling Stockholder in Schedule B hereto under the caption "Number of Firm Securities to be Sold," in the case of a Selling Stockholder, in each case by a fraction the numerator of which is the number of Firm

Securities set forth opposite the name of such Underwriter in Schedule A hereto and the denominator of which is the total number of Firm Securities.

Certificates in negotiable form for the Offered Securities to be sold by such Selling Stockholders hereunder have been placed in custody, for delivery under this Agreement, under a Custody Agreement made with Registrar and Transfer Company, as custodian ("**Custodian**"). Each Selling Stockholder agrees that the shares represented by the certificates held in custody for such Selling Stockholder under the applicable Custody Agreement are subject to the interests of the Underwriters hereunder, that the arrangements made by such Selling Stockholder for such custody are to that extent irrevocable, and that the obligations of such Selling Stockholder hereunder shall not be terminated by operation of law, whether by the death of such Selling Stockholder (if an individual) or the occurrence of any other event, or in the case of a trust, by the death of any trustee or trustees or the termination of such trust. If any individual Selling Stockholder or any such trustee or trustees should die, or if any other such event should occur, or if any of such trusts should terminate, before the delivery of the Offered Securities hereunder, the applicable Selling Stockholder agrees that the certificates for such Offered Securities shall be delivered by the Custodian in accordance with the terms and conditions of this Agreement as if such death or other event or termination had not occurred, regardless of whether or not the Custodian shall have received notice of such death or other event or termination.

The Company and the Custodian will deliver the Firm Securities to or as instructed by Credit Suisse for the accounts of the several Underwriters in a form reasonably acceptable to Credit Suisse against payment by the Underwriters of the purchase price in Federal (same day) funds by official bank check or checks or wire transfer to an account at a bank acceptable to Credit Suisse drawn to the order of **[ ]** in the case of **[ ]** shares of Firm Securities and **[ ]** in the case of **[ ]** shares of Firm Securities, at the office of Skadden, Arps, Arps, Slate, Meagher & Flom LLP located at 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071, at **[ ]** A.M., New York time, on **[ ]**, or at such other time not later than seven full business days thereafter as Credit Suisse and the Company determine, such time being herein referred to as the "**First Closing Date**". For purposes of Rule 15c6-1 under the Exchange Act, the First Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of securities for all the Offered Securities sold pursuant to the offering. The Firm Securities so to be delivered or evidence of their issuance will be made available for checking at the above office of Skadden, Arps, Arps, Slate, Meagher & Flom LLP at least 24 hours prior to the First Closing Date.

In addition, upon written notice from Credit Suisse given to the Company and the Selling Stockholders from time to time not more than 30 days subsequent to the date of the Final Prospectus, the Underwriters may purchase all or less than all of the Optional Securities at the purchase price per Security to be paid for the Firm Securities. Each Selling Stockholder agrees, severally and not jointly, to sell to the Underwriters the respective numbers of Optional Securities obtained by multiplying the number of Optional Securities specified in such notice by a fraction the numerator of which is the number of shares set forth opposite the names of such Selling Stockholder in Schedule B hereto under the caption "Number of Optional Securities to be Sold" and the denominator of which is the total number of Optional Securities (subject to adjustment by

Credit Suisse to eliminate fractions). Such Optional Securities shall be purchased from each Selling Stockholder for the account of each Underwriter in the same proportion as the number of Firm Securities set forth opposite such Underwriter's name bears to the total number of Firm Securities (subject to adjustment by Credit Suisse to eliminate fractions) and may be purchased by the Underwriters only for the purpose of covering over-allotments made in connection with the sale of the Firm Securities. No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time and to the extent not previously exercised may be surrendered and terminated at any time upon notice by Credit Suisse to the Company and each Selling Stockholder.

Each time for the delivery of and payment for the Optional Securities, being herein referred to as an "**Optional Closing Date**", which may be the First Closing Date (the First Closing Date and each Optional Closing Date, if any, being sometimes referred to as a "**Closing Date**"), shall be determined by Credit Suisse but shall be not later than five full business days after written notice of election to purchase Optional

Securities is given. The Custodian will deliver the Optional Securities being purchased on each Optional Closing Date to or as instructed by Credit Suisse for the accounts of the several Underwriters in a form reasonably acceptable to Credit Suisse, against payment of the purchase price therefore in Federal (same day) funds by official bank check or checks or wire transfer to an account at a bank acceptable to Credit Suisse drawn to the order of **[ ]** in the case of **[ ]** Optional Securities and **[ ]** in the case of **[ ]** Optional Securities, at the above office of Skadden, Arps, Slate, Meagher & Flom LLP. The Optional Securities being purchased on each Optional Closing Date or evidence of their issuance will be made available for checking at the above office of Skadden, Arps, Slate, Meagher & Flom LLP at a reasonable time in advance of such Optional Closing Date.

4. *Offering by Underwriters.* It is understood that the several Underwriters propose to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

5. *Certain Agreements of the Company.* The Company agrees with the several Underwriters that:

(a) *Additional Filings.* Unless filed pursuant to Rule 462(c) as part of the Additional Registration Statement in accordance with the next sentence, the Company will file the Final Prospectus, in a form approved by the Representatives, with the Commission pursuant to and in accordance with subparagraph (1) (or, if applicable and if consented to by the Representatives, subparagraph (4)) of Rule 424(b) not later than the earlier of (A) the second business day following the execution and delivery of this Agreement or (B) the fifteenth business day after the Effective Time of the Initial Registration Statement. The Company will advise the Representatives promptly of any such filing pursuant to Rule 424(b) and provide satisfactory evidence to the Representatives of such timely filing. If an Additional Registration Statement is necessary to register a portion of the Offered Securities under the Act but the Effective Time thereof has not occurred as of the execution and delivery of this Agreement, the Company will file the additional registration statement or, if filed, will file a post-effective amendment thereto with the Commission pursuant to and in accordance with Rule 462(b) on or prior to 10:00 P.M., New York time, on the date of this Agreement or, if earlier, on or prior to the time the Final Prospectus is finalized and distributed to any Underwriter, or will make such filing at such later date as shall have been consented to by the Representatives.

(b) *Filing of Amendments. Response to Commission Requests.* The Company will promptly advise the Representative of any proposal to amend or supplement at any time the Initial Registration Statement, any Additional Registration Statement or any Statutory Prospectus and will not effect such amendment or supplementation without the Representatives' consent; and the Company will also advise the Representatives promptly of (i) the effectiveness of any Additional Registration Statement (if its Effective Time is subsequent to the execution and delivery of this Agreement), (ii) any amendment or supplementation of a Registration Statement or any Statutory Prospectus, (iii) any request by the Commission or its staff for any amendment to any Registration Statement, for any supplement to any Statutory Prospectus or for any additional information, (iv) the institution by the Commission of any stop order proceedings in respect of a Registration Statement or the threatening of any proceeding for that purpose, and (v) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its commercially reasonable efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(c) *Continued Compliance with Securities Laws.* If, at any time when a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act by any Underwriter or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Act, the Company will promptly notify the Representatives of such event and will promptly prepare and file with the

Commission and furnish, at its own expense, to the Underwriters and the dealers and any other dealers upon request of the Representatives, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representatives' consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 8 hereof.

(d) *Rule 158.* As soon as practicable, but not later than the Availability Date (as defined below), the Company will make generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the Effective Date of the Initial Registration Statement (or, if later, the Effective Time of the Additional Registration Statement) which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act. For the purpose of the preceding sentence, "**Availability Date**" means the day after the end of the fourth fiscal quarter following the fiscal quarter that includes such Effective Time on which the Company is required to file its Form 10-Q for such fiscal quarter except that, if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "Availability Date" means the day after the end of such fourth fiscal quarter on which the Company is required to file its Form 10-K.

(e) *Furnishing of Prospectuses.* The Company will furnish to the Representatives copies of each Registration Statement (three of which will be signed and will include all exhibits), each related Statutory Prospectus, and, so long as a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act, the Final Prospectus and all amendments and supplements to such documents, in each case in such quantities as the Representatives reasonably request. The Final Prospectus shall be so furnished on or prior to 3:00 P.M., New York time, on the business day following the execution and delivery of this Agreement. All other such documents shall be so furnished as soon as available. The Company will pay the expenses of printing and distributing to the Underwriters all such documents.

(f) *Blue Sky Qualifications.* The Company will cooperate with Credit Suisse for the qualification of the Offered Securities for sale under the laws of such jurisdictions as the Representatives reasonably designate and will continue such qualifications in effect so long as required for the distribution of the Offered Securities by the Underwriters as contemplated hereby; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(g) *Reporting Requirements.* During the period of five years hereafter, the Company will furnish to the Representatives and, upon request, to each of the other Underwriters, as soon as practicable after the end of each fiscal year, a copy of its annual report to stockholders for such year; and the Company will furnish to the Representatives (i) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act

or mailed to stockholders, and (ii) from time to time, such other information concerning the Company as the Representatives may reasonably request. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on its Electronic Data Gathering, Analysis and Retrieval system ("**EDGAR**"), it is not required to furnish such reports or statements to the Underwriters.

(h) *Payment of Expenses.* The Company and each Selling Stockholder agree with the several Underwriters that the Company will pay for the following: (i) all expenses incident to the performance of the obligations of the Company under this Agreement; (ii) any filing fees and other expenses incurred in connection with qualification of the Offered Securities for sale under the laws of such jurisdictions as the Representatives reasonably designate and the preparation and printing of memoranda relating thereto (including the reasonable fees and disbursements of one counsel for the Underwriters in connection therewith); (iii) costs and expenses related to the review by the Financial Industry Regulatory Authority, Inc. of the Offered Securities (including filing fees related thereto and the reasonable fees and disbursements of one counsel for the Underwriters in connection therewith);

(iv) costs and expenses relating to investor presentations or any "road show" in connection with the offering and sale of the Offered Securities including, without limitation, any travel expenses of the Company's officers and employees and any other expenses of the Company; provided, however, that the costs of the chartering of airplanes shall be shared evenly between the Company and the Underwriters; (v) fees and expenses incident to listing the Offered Securities on the New York Stock Exchange and other national and foreign exchanges, as applicable; (vi) fees and expenses in connection with the registration of the Offered Securities under the Exchange Act; (vii) any transfer taxes on the sale by such Selling Stockholder of the Offered Securities to the Underwriters; (viii) expenses incurred in distributing preliminary prospectuses and the Final Prospectus (including any amendments and supplements thereto) to the Underwriters and for expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectuses to investors or prospective investors; and (ix) the costs and expenses described in Section 5(m). Except as otherwise provided by this Agreement, the Underwriters shall pay their own costs and expenses in connection with the transactions contemplated hereby, including, without limitation, fees and expenses of their counsel.

(i) *Use of Proceeds.* The Company will use the net proceeds received by it in connection with this offering in the manner described in the "Use of Proceeds" section of the General Disclosure Package and, except as disclosed in the General Disclosure Package, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to any affiliate of any Underwriter.

(j) *Absence of Manipulation.* The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

(k) *Restriction on Sale of Securities by Company.* For the period specified below (the "**Lock-Up Period**"), the Company will not, directly or indirectly, take any of the following actions with respect to its Securities or any securities convertible into or exchangeable or exercisable for any of its Securities ("**Lock-Up Securities**"): (i) offer, sell, issue, contract to sell, pledge or otherwise dispose of Lock-Up Securities, (ii) offer, sell, issue, contract to sell, contract to purchase or grant any option, right or warrant to purchase Lock-Up Securities, (iii) enter into any swap, hedge or any other agreement that transfers, in whole or in part, the economic consequences of ownership of Lock-Up Securities, (iv) establish or increase a put equivalent position or liquidate or decrease a call equivalent position in Lock-Up Securities within the meaning of Section 16 of the Exchange Act or (v) file with the Commission a registration statement under the Act relating to Lock-Up Securities, or publicly disclose the intention to take any such action, without the prior written consent of Credit Suisse, in each case except (A) grants of stock options, stock appreciation rights, restricted stock, restricted stock units or other stock-based awards pursuant to the Company's 2010 Stock Incentive Plan, (B) to effect the stock split described in the Prospectus and the General Disclosure Package, (C) the filing of any registration statement on Form S-8 with respect to the Company's 2010 Stock Incentive Plan or the Company's Amended and Restated 2004 Stock Incentive Plan, (D) issuances of Lock-Up Securities pursuant to the exercise, conversion or vesting of stock options, stock appreciation rights, restricted stock, restricted stock units, deferred stock units or other stock-based awards or (E) the exercise of any other employee stock options outstanding on the date hereof, in the case of each of clauses (A), (C), (D) and (E), to the extent that such plans, options or other equity awards are described in the Prospectus and the General Disclosure Package. The initial Lock-Up Period will commence on the date hereof and continue for 180 days after the date hereof or such earlier date that Credit Suisse consents to in writing; provided, however, that if (1) during the last 17 days of the initial Lock-Up Period, the Company releases earnings results or material news or a material event relating to the Company occurs or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be extended until the expiration of the 18-day period beginning on the date of release of the earnings results or the occurrence of the material news or material event, as applicable, unless Credit Suisse waives, in writing, such extension. The

Company will provide Credit Suisse with notice of any announcement described in clause (2) of the preceding sentence that gives rise to an extension of the Lock-Up Period.

(l) *Transfer Restrictions.* In connection with the Directed Share Program, the Company will take all reasonable steps to ensure that the Directed Shares will be restricted to the extent required by the FINRA or the FINRA rules from sale, transfer, assignment, pledge or hypothecation for a period of three months following the date of the effectiveness of the Registration Statement. The Designated Underwriter will notify the Company as to which Participants will need to be so restricted. The Company will direct the transfer agent to place stop transfer restrictions upon such securities for such period of time.

(m) *Payment of Expenses Related to Directed Share Program.* The Company will pay all reasonable out-of-pocket fees and disbursements of counsel (including non-U.S. counsel, if applicable) incurred by the Underwriters in connection with the Directed Share Program and stamp duties, similar taxes or duties or other taxes, if any, incurred by the Underwriters in connection with the Directed Share Program.

(n) *Compliance with Foreign Laws.* The Company will comply in all material respects with all applicable securities and other applicable laws, rules and regulations in each foreign jurisdiction in which the Directed Shares are offered in connection with the Directed Share Program.

6. *Certain Agreements of the Selling Stockholders.* Each Selling Stockholder severally and not jointly agrees with the several Underwriters that such Selling Stockholder will not take, directly or indirectly, any action designed to or that would constitute or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

7. *Free Writing Prospectuses*. The Company and each Selling Stockholder represents and agrees that, unless they obtain the prior consent of Credit Suisse, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and Credit Suisse, it has not made and will not make any offer relating to the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and Credit Suisse is hereinafter referred to as a "**Permitted Free Writing Prospectus**." The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping. The Company represents that is has satisfied and agrees that it will satisfy the conditions in Rule 433 to avoid a requirement to file with the Commission any electronic road show.

8. *Conditions of the Obligations of the Underwriters.* The obligations of the several Underwriters to purchase and pay for the Firm Securities on the First Closing

Date and the Optional Securities to be purchased on each Optional Closing Date will be subject to the accuracy of the representations and warranties of the Company and the Selling Stockholders herein (as though made on such Closing Date), to the accuracy of the statements of Company officers made pursuant to the provisions hereof, to the performance by the Company and the Selling Stockholders of their obligations hereunder and to the following additional conditions precedent:

(a) *Accountants' Comfort Letter.* The Representatives shall have received letters, dated, respectively, the date hereof and each Closing Date, of Ernst & Young LLP confirming that they are a registered public accounting firm and independent public accountants within the meaning of the Securities Laws and substantially in the form of Schedule E hereto (except that, in any letter dated a Closing Date, the specified date referred to in Schedule E hereto shall be a date no more than three days prior to such Closing Date).

(b) *Effectiveness of Registration Statement.* If the Effective Time of the Additional Registration Statement (if any) is not prior to the execution and delivery of this Agreement, such Effective Time shall have occurred not later than 10:00 P.M., New York time, on the date of this Agreement or, if earlier, the time the Final Prospectus is finalized and distributed to any Underwriter, or shall have occurred at such later time as shall have been consented to by the Representatives. The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) hereof. Prior to such Closing Date, no stop order suspending the effectiveness of a Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of any Selling Stockholder, the Company or the Representatives, shall be contemplated by the Commission.

(c) *No Material Adverse Change.* Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole which, in the judgment of the Representatives, is material and adverse and makes it impractical or inadvisable to market the Offered Securities; (ii) any downgrading in the rating of any debt securities or preferred stock of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g)), or any public announcement that any such organization has under surveillance or review its rating of any debt securities or preferred stock of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Representatives, impractical to market or to enforce contracts for the sale of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any suspension or material limitation of trading in securities generally on the New York Stock Exchange, or any setting of minimum or maximum prices for trading on such exchange; (v) or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. federal or New York authorities; (vii) any major disruption of settlements of securities, payment or clearance services in the United States or any other country where such securities are listed or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representatives, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it impractical or inadvisable to market the Offered Securities or to enforce contracts for the sale of the Offered Securities.

(d) *Opinion of Counsel for the Company.* The Representative shall have received an opinion and negative assurance letter, each dated as of such Closing Date, of Gibson, Dunn & Crutcher LLP, counsel for the Company, in the form attached hereto as Exhibit A-1 and Exhibit A-2, respectively.

(e) *Opinions of Various Counsel for Selling Stockholders.* The Representatives shall have received an opinion, dated as of such Closing Date, from each of the following counsel in respect of their representation of certain of the Selling Stockholders: [(A) Gibson, Dunn & Crutcher LLP in its capacity as counsel to the Selling Stockholders identified in Schedule F hereto, (B) Dewey LeBoeuf LLP in its capacity as counsel to General Electric Pension Trust, and (C) Proskauer Rose LLPin its capacity as counsel to Ares Corporate Opportunities Fund, L.P.], with each such opinion being substantially in the form attached hereto as Exhibit B.

(f) *Opinion of Counsel for Underwriters.* The Representative shall have received from Skadden, Arps, Slate, Meagher & Flom LLP ("**Skadden**"), counsel for the Underwriters, such opinion or opinions, dated such Closing Date, with respect to such matters as the Representative may require, and the Selling Stockholders and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(g) *Officer's Certificate.* The Representatives shall have received a certificate, dated such Closing Date, of an executive officer of the Company and a principal financial or accounting officer of the Company in which such officers shall state on behalf of the Company in their capacities as such officers that: the representations and warranties of the Company in this Agreement are true and correct; the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; no stop order suspending the effectiveness of any Registration Statement is in effect and no proceedings for that purpose have been instituted or, to the best of their knowledge and after reasonable investigation, are contemplated by the Commission; the Additional Registration Statement (if any) satisfying the requirements of subparagraphs (1) and (3) of Rule 462(b) was timely filed pursuant to Rule 462(b), including payment of the applicable filing fee in accordance with Rule 111(a) or (b) of Regulation S-T of the Commission; and, subsequent to the date of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole except as set forth in the General Disclosure Package or as described in such certificate.

(h) *Lock-Up Agreements.* On or prior to the date hereof, the Representatives shall have received lock-up letters from each of the executive officers and directors of the Company who are not Selling Stockholders, each of the Selling Stockholders and the other holders of capital stock of the Company listed on Schedule G hereto.

(i) *Treasury Department Reporting.* The Custodian will deliver to the Representatives a letter stating that they will deliver to each Selling Stockholder a United States Treasury Department Form 1099 (or other applicable form or statement specified by the United States Treasury Department regulations in lieu thereof) on or before January 31 of the year following the date of this Agreement.

(j) *Redemption of Notes.* On or prior to the First Closing Date, the Company shall have mailed or caused to be mailed, by first class mail, a notice of redemption to each holder of the Company's 7¾% senior notes due 2012 (the "Notes") in accordance with Section 3.3 of the Indenture, dated as of December 16, 2004, related thereto, and shall have deposited with the trustee thereof an amount in immediately available funds sufficient to effect the satisfaction and discharge of the Notes.

(k) *Amendments to Credit Facilities.* On or prior to the First Closing Date, (A) the amendments to each of (i) the $60 million senior secured revolving facility of Douglas Dynamics, L.L.C., Douglas Dynamics Finance Company and Fisher, LLC, as borrowers, and (ii) the $85 million senior secured term loan facility of Douglas Dynamics, L.L.C., Douglas Dynamics Finance Company and Fisher, LLC, as borrowers, in the forms filed as Exhibits 10.2 and 10.4 to the Registration Statement, shall have been consummated as described in the General Disclosure Package, and (B) the Company shall have received net proceeds of $40 million pursuant to an increase in the $85 million senior secured term loan facility, as described in the General Disclosure Package.

(l) *Good Standing Certificates.* On or prior to each Closing Date, the Representatives shall have received with respect to each Selling Stockholder that is an entity, a certificate as of a recent date from the jurisdiction of organization of each Selling Stockholder confirming that such Selling Stockholder is in good standing under the laws of the jurisdiction of its organization, to the extent such concept exists in the relevant jurisdiction.

The Selling Stockholders and the Company will furnish the Representatives with conformed copies of the above opinions, certificates, letters and documents as well as copies of such other documents as the Representatives reasonably request. Credit Suisse may in its sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters hereunder, whether in respect of an Optional Closing Date or otherwise.

9. *Indemnification and Contribution.* (a) *Indemnification of Underwriters by Company.* The Company will indemnify and hold harmless each Underwriter, its partners, members, directors, officers,

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employees, agents, affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each an "**Indemnified Party**"), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus, in light of the circumstances under which they were made) not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto), whether threatened or commenced, and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representative specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (c) below.

The Company agrees to indemnify and hold harmless the Designated Underwriter and its affiliates and each person, if any, who controls the Designated Underwriter within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act (the "**Designated Entities"**), from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) (i) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Participants in connection with the Directed Share Program or arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (ii) arising out of or based upon the failure of any Participant to pay for and accept delivery of Directed Shares that the Participant agreed to purchase; or (iii) arising out of, related to, or in connection with the Directed Share Program, other than losses, claims, damages or liabilities (or expenses relating thereto) that are finally judicially determined to have resulted from the willful misconduct or gross negligence of the Designated Entities.

(b) *Indemnification of Underwriters by Selling Stockholders.* The Selling Stockholders, severally and not jointly, will indemnify and hold harmless each Indemnified Party, against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus, in light of the circumstances under which they were made) not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto), whether threatened or commenced, and in connection with the enforcement of this provision with respect to the above as such expenses are incurred; provided, however, that each Selling Stockholder shall be subject to such liability only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission is based upon the applicable Selling Stockholder Information; and provided, further, that the liability under this subsection of each Selling Stockholder shall be limited to an amount equal to the aggregate gross proceeds after underwriting commissions and discounts, but before expenses, to such Selling Stockholder from the sale of Securities sold by such Selling Stockholder hereunder (with respect to each Selling Stockholder, such amount being referred

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to herein as such Selling Stockholder's "**Sale Proceeds**").

(c) *Indemnification of Company and Selling Stockholders.* Each Underwriter will severally and not jointly indemnify and hold harmless the Company, each of its directors and each of its officers who signs a Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and each Selling Stockholder and each person, if any, who controls any Selling Stockholder within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an "**Underwriter Indemnified Party**") against any and all losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Act, the Exchange Act, or other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement at any time, any Statutory Prospectus at any time, the Final Prospectus or any Issuer Free Writing Prospectus or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus, in light of the circumstances under which they were made) not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives specifically for use therein, and will reimburse each Underwriter Indemnified Party any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Underwriter Indemnified Party is a party thereto), whether threatened or commenced, based upon any such untrue statement or omission, or any such alleged untrue statement or omission as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information under the caption "Underwriting" in the Final Prospectus furnished on behalf of each Underwriter: (i) the concession figure appearing in the fourth paragraph thereunder, (ii) the information related to discretionary accounts contained in the sixth paragraph thereunder, and (iii) the information related to stabilizing transactions, over-allotment transactions, syndicate covering transactions and penalty bids contained in the fifteenth paragraph thereunder.

(d) *Actions against Parties; Notification.* Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under subsection (a), (b) or (c) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a), (b) or (c) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a), (b) or (c) above. In case any such action is brought against any indemnified party and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. Notwithstanding anything contained herein to the contrary, if indemnity may be sought pursuant to the last paragraph in Section 9(a) hereof in respect of such action or proceeding, then in addition to

such separate firm for the indemnified parties, the indemnifying party shall be liable for the reasonable fees and expenses of not more than one separate firm (in addition to any local counsel) for the Designated Underwriter for the defense of any losses, claims, damages and liabilities arising out of the Directed Share Program, and all persons, if any, who control the Designated Underwriter within the meaning of either Section 15 of the Act of Section 20 of the Exchange Act. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that

are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(e) *Contribution.* If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a), (b) or (c) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a), (b) or (c) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Selling Stockholders on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company and the Selling Stockholders bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, the Selling Stockholders or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (e) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (e). Notwithstanding the provisions of this subsection (e), (i) no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission and (ii) no Selling Stockholder shall be required to contribute any amount in excess of such Selling Stockholder's Sale Proceeds. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (e) to contribute are several in proportion to their respective underwriting obligations and not joint. Each Selling Stockholder's obligations in this subsection (e) to contribute are several and not joint. The Company, the Selling Stockholders and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 9(e) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 9(e).

10. *Default of Underwriters.* If any Underwriter or Underwriters default in their obligations to purchase Offered Securities hereunder on either the First or any Optional Closing Date and the aggregate number of shares of Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total number of shares of Offered Securities that the Underwriters are obligated to purchase on such Closing Date, Credit Suisse may make arrangements satisfactory to the Company and the Selling Stockholders for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by such Closing Date, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Underwriters agreed but failed to purchase on such Closing Date. If any Underwriter or Underwriters so default and the aggregate number of shares of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total number of shares of Offered Securities that the Underwriters are obligated to purchase on such Closing Date and arrangements satisfactory to Credit Suisse, the Company and the Selling Stockholders for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter, the Company or any Selling Stockholder, except as provided in Section 11 (provided that if such default occurs with respect to Optional Securities after the First Closing Date, this Agreement will not terminate as to the Firm Securities or any Optional Securities

purchased prior to such termination). As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

11. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Selling Stockholders, of the Company and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, any Selling Stockholder, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If the purchase of the Offered Securities by the Underwriters is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 10 hereof, the Company will reimburse the Underwriters for all out-of-pocket expenses (including fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities, and the respective obligations of the Company, the Selling Stockholders and the Underwriters pursuant to Section 9 hereof shall remain in effect. In addition, if any Offered Securities have been purchased hereunder, the representations and warranties in Section 2 and all obligations under Section 5 shall also remain in effect.

12. *Notices*. All communications hereunder will be in writing and, if sent to the Underwriters, will be mailed, delivered or telegraphed and confirmed to the Representatives, c/o Credit Suisse Securities (USA) LLC, Eleven Madison Avenue, New York, N.Y. 10010-3629, Attention: LCD-IBD, or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 7777 North 73rd Street, Milwaukee, WI 53223, Attention: Robert McCormick with a copy to Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071, Attention: Bruce Meyer, or, if sent to the Selling Stockholders or any of them, will be mailed, delivered or telegraphed and confirmed to **[ ]** at **[ ]** with a copy to Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071, Attention: Bruce Meyer; provided, however, that any notice to an Underwriter pursuant to Section 9 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

13. *Successors*. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective personal representatives and successors and the officers and directors and controlling persons referred to in Section 8, and no other person will have any right or obligation hereunder.

14. *Representation*. The Representatives will act for the several Underwriters in connection with the transactions contemplated by this Agreement, and any action under this Agreement taken by the Representatives will be binding upon all the Underwriters.

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

16. *Absence of Fiduciary Relationship.* The Company and the Selling Stockholders acknowledge and agree that:

(a) *No Other Relationship.* The Representatives have been retained solely to act as underwriters in connection with the sale of the Offered Securities and that no fiduciary, advisory or agency relationship between the Company or the Selling Stockholders, on the one hand, and the Representatives, on the other, has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether the Representatives have advised or are advising the

Company or the Selling Stockholders on other matters;

(b) *Arms' Length Negotiations.* The price of the Offered Securities set forth in this Agreement was established by Company and the Selling Stockholders following discussions and arms-length negotiations with the Representatives and the Company and the Selling Stockholders are capable of

evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) *Absence of Obligation to Disclose.* The Company and the Selling Stockholders have been advised that the Representatives and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company or the Selling Stockholders and that the Representatives have no obligation to disclose such interests and transactions to the Company or the Selling Stockholders by virtue of any fiduciary, advisory or agency relationship; and

(d) *Waiver.* The Company and the Selling Stockholders waive, to the fullest extent permitted by law, any claims they may have against the Representatives for breach of fiduciary duty or alleged breach of fiduciary duty and agree that the Representatives shall have no liability (whether direct or indirect) to the Company or the Selling Stockholders in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

17. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in the City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

If the foregoing is in accordance with the Representatives' understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement among the Selling Stockholders, the Company and the several Underwriters in accordance with its terms.

Very truly yours,

DOUGLAS DYNAMICS, INC.

By: ______________________________
Name:
Title:

SELLING STOCKHOLDERS

By: ______________________________
Name:
Title: As Attorney-in-Fact acting on behalf of each of the Selling Stockholders named in Schedule B to this Agreement

The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

CREDIT SUISSE SECURITIES (USA) LLC

By: ______________________________
Name:
Title:

Acting on behalf of themselves and as the Representative of the several Underwriters.

By: CREDIT SUISSE SECURITIES (USA) LLC

By: ______________________________
Name:
Title:

SCHEDULE A

Underwriter	Number of Firm Securities to be Purchased
Credit Suisse Securities (USA) LLC	
Oppenheimer & Co. Inc.	
Piper Jaffray & Co.	
Robert W. Baird & Co. Incorporated	
Total	

SCHEDULE B

Selling Stockholder	Number of Firm Securities to be Sold	Number of Optional Securities to be Sold
Total		

SCHEDULE C

1. **General Use Free Writing Prospectuses (included in the General Disclosure Package)**

   None.

2. **Other Information Included in the General Disclosure Package**

   The following information is also included in the General Disclosure Package:

   The initial price to the public of the Offered Securities.

SCHEDULE D

SUBSIDIARIES

SCHEDULE E

The Representatives shall have received letters, dated, respectively, the date hereof and the First Closing Date, of Ernst & Young LLP confirming that they are a registered public accounting firm and independent public accountants within the meaning of the Securities Laws to the effect that:

[To come]

SCHEDULE F

CERTAIN SELLING STOCKHOLDERS

SCHEDULE G

LOCK-UP AGREEMENTS

EXHIBIT A-1

EXHIBIT A-2

EXHIBIT B

FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
DOUGLAS DYNAMICS, INC.

The undersigned, for the purpose of amending and restating the Certificate of Incorporation of Douglas Dynamics, Inc., a Delaware corporation (the **"Corporation"**), does hereby certify that:

1. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on March 11, 2004 and was amended and restated by that certain Amended and Restated Certificate of Incorporation as filed with the Secretary of State of the State of Delaware on March 30, 2004, which was further amended and restated by that certain Second Amended and Restated Certificate of Incorporation as filed with the Secretary of State of the State of Delaware on April 12, 2004, which was further amended and restated by that certain Third Amended and Restated Certificate of Incorporation as filed with the Secretary of State of the State of Delaware on December 14, 2004, and which was further amended by that certain Certificate of Amendment of Third Amended and Restated Certificate of Incorporation as filed with the Secretary of State of State of Delaware on January 26, 2010.

2. The Corporation's original name was 'Douglas Dynamics Holdings, Inc."

3. This Fourth Amended and Restated Certificate of Incorporation (the **"Amended and Restated Certificate of Incorporation"**) has been duly adopted pursuant to Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the **"DGCL"**).

4. The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety as follows:

ARTICLE I

NAME OF CORPORATION

The name of this corporation is:

Douglas Dynamics, Inc.

ARTICLE II

REGISTERED OFFICE

The address of the registered office of the Corporation in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover 19904, County of Kent, and the name of its registered agent at that address is National Registered Agents, Inc.

ARTICLE III

PURPOSE

The purposes for which the Corporation is formed are to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

AUTHORIZED CAPITAL STOCK

SECTION A. Authorized Shares. The Corporation shall be authorized to issue two classes of shares of stock to be designated, respectively, "Preferred Stock" and "Common Stock." The total number of shares that the Corporation shall have authority to issue is 205,000,000.

1. Common Stock. The total number of shares of common stock the Corporation shall have authority to issue shall be 200,000,000, and each such share shall have a par value of one cent ($.01) per share (the **"Common Stock"**).

Effective as of the date of filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, every one (1) share of Common Stock of the Corporation issued and outstanding as of such date shall be subdivided into 23.75 shares of Common Stock.

2. Preferred Stock. The total number of shares of Preferred Stock that the Corporation shall have authority to issue shall be 5,000,000 and all such shares shall have a par value of one cent ($.01) per share (the **"Preferred Stock"**).

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3. Subject to limitations prescribed by law and the provisions of this Article IV, the Board of Directors of the Corporation (the **"Board"**) is hereby authorized to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, privileges, preferences, and relative participating, optional or other rights, if any, of the shares of each such series and the qualifications, limitations or restrictions thereof. The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

(a) the number of shares constituting such series, including any increase or decrease in the number of shares of any such series (but not below the number of shares in any such series then outstanding), and the distinctive designation of such series;

(b) the dividend rate on the shares of such series, if any, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of such series;

(c) whether the shares of such series shall have voting rights (including multiple or fractional votes per share) in addition to the voting rights

provided by law, and, if so, the terms of such voting rights;

(d) whether the shares of such series shall have conversion privileges, and, if so, the terms and conditions of such privileges, including provision for adjustment of the conversion rate in such events as the Board shall determine;

(e) whether or not the shares of such series shall be redeemable, and if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption rates;

(f) whether a sinking fund shall be provided for the redemption or purchase of shares of such series, and, if so, the terms and the amount of such sinking fund;

(g) the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of such series; and

(h) any other relative rights, preferences and limitations of such series.

4. No Class Vote On Changes In Authorized Number Of Shares Of Stock. Subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the number of authorized shares of any class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote generally in the election of directors irrespective of the provisions of Section 242(b)(2) of the DGCL.

SECTION B. Common Stock.

1. Voting Rights. Each holder of Common Stock, as such, shall be entitled to one (1) vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any Certificate of Designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any Certificate of Designations relating to any series of Preferred Stock) or pursuant to the DGCL.

2. Dividends. Subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive dividends out of any funds of the Corporation legally available therefor when and as declared by the Board.

3. Liquidation. Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

ARTICLE V

BOARD OF DIRECTORS

SECTION A. Board of Directors.

1. Number. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof relating to the rights of holders of any series of Preferred Stock to elect additional directors in certain circumstances, the Board shall consist of such number of directors as fixed from time to time pursuant to the Bylaws of the Corporation.

2. Classification. The directors, other than those who may be elected by the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV hereof ("**Preferred Stock Directors**"), shall be divided into three classes as nearly equal in size as is practicable, designated Class I, Class II and Class III. The Class I directors shall initially serve until the Corporation's first annual meeting of stockholders following the effectiveness of this Amended and Restated Certificate of Incorporation, the Class II directors shall initially serve until the Corporation's second annual meeting of stockholders following the effectiveness of this Amended and Restated Certificate of Incorporation and the Class III directors shall initially serve until the Corporation's third annual meeting of stockholders following the effectiveness of this Amended and Restated Certificate of Incorporation. Commencing with the first annual meeting of stockholders, following the effectiveness of this Amended and Restated Certificate of Incorporation, directors of each class the term of which shall then expire shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office, or until such director's earlier death, disqualification, resignation or removal. In case of any increase or decrease, from time to time,

in the number of directors (other than Preferred Stock Directors), the number of directors in each class shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible. The Board of Directors is authorized to assign members of the Board of Directors already in office to Class I, Class II or Class III.

3. Newly Created Directorships and Vacancies. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise provided by law, be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board. Any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

4. Removal of Directors. Except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Article IV hereof, any director, or the entire Board, may be removed from office at any time, but only for cause and only by the affirmative vote of at least 66 2/3% of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

5. Preferred Stock Directors. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV hereof, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such

Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, disqualification, resignation or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

SECTION B. Powers.

1. Powers. Except as otherwise expressly provided by the DGCL or this Amended and Restated Certificate of Incorporation, the management of the business and the conduct of the affairs of the Corporation shall be vested in its Board.

SECTION C. Election.

1. Ballot Not Required. The directors of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation so provide.

2. No Cumulative Voting. The holders of stock of any class or series of the Corporation shall not be entitled to cumulative voting rights as to the directors to be elected by such class or series.

3. Notice. Advance notice of stockholder nominations for the election of directors shall be given in the manner and to the extent provided in the Bylaws of the Corporation.

ARTICLE VI

STOCKHOLDER ACTION

Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof relating to the rights of holders of any series of Preferred Stock, no action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting of stockholders.

ARTICLE VII

SPECIAL MEETINGS OF STOCKHOLDERS

Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof relating to the rights of holders of any series of Preferred Stock, a special meeting of the stockholders of the Corporation may be called at any time only by a majority of the members of the Board. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting.

ARTICLE VIII

EXISTENCE

The Corporation shall have perpetual existence.

ARTICLE IX

AMENDMENT

SECTION A. Amendments.

1. Amendment of Certificate of Incorporation. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation; provided, however, that in addition to any requirements of law and any other provision of this

Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of the holders of at least 66 2/3% in voting power of the issued and outstanding stock entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, Articles V, VI, VII, IX and X of this Amended and Restated Certificate of Incorporation.

2. Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation. In addition to any requirements of law and any other provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of the holders of at least 66 2/3% in voting power of the issued and outstanding stock entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to amend or repeal, or adopt any provision inconsistent with, any Bylaw of the Corporation.

ARTICLE X

LIABILITY OF DIRECTORS

SECTION A. Liability of Directors.

1. No Personal Liability. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

2. Amendment or Repeal. Any amendment, alteration or repeal of this Article X that adversely affects any right of a director or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed, signed and acknowledged by [·], its [·] as of the [·]th day of [·], 2010.

DOUGLAS DYNAMICS, INC.

By: ______________________________
Name:
Title:

Exhibit 3.6

SECOND AMENDED AND RESTATED BYLAWS

OF

DOUGLAS DYNAMICS, INC.

(A DELAWARE CORPORATION)

ARTICLE I.

CORPORATE OFFICES

Section 1.01 Registered Office. The registered office of the Corporation shall be fixed in the Certificate of Incorporation of the Corporation.

Section 1.02 Other Offices. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as may otherwise be required by law, at such other place or places, either within or without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II.

MEETINGS OF STOCKHOLDERS

Section 2.01 Annual Meeting. The annual meeting of stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as may be determined by the Board of Directors.

Section 2.02 Special Meeting. Subject to the rights of the holders of any series of preferred stock, a special meeting of the stockholders may be called at any time only by a majority of the Board of Directors.

Section 2.03 Notice of Stockholders' Meetings.

(a) Notice of the place, if any, date, and time of all meetings of the stockholders, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided herein or required by law. In the case of a special meeting, the purpose or purposes for which the meeting is called also shall be set forth in

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the notice. Notice may be given personally, by mail or by electronic transmission in accordance with Section 232 of the General Corporation Law of the State of Delaware (the "**DGCL**"). If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to each stockholder at such stockholder's address appearing on the books of the Corporation or given by the stockholder for such purpose. Notice by electronic transmission shall be deemed given as provided in Section 232 of the DGCL. An affidavit of the mailing or other means of giving any notice of any stockholders' meeting, executed by the Secretary, Assistant Secretary or any transfer agent of the Corporation giving the notice, shall be prima facie evidence of the giving of such notice or report. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the DGCL.

(b) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally called, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.07(a) of these Bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

(c) Notice of any meeting of stockholders may be waived in writing, either before or after the meeting, and to the extent permitted by law, will be waived by any stockholder by attendance thereat, in person or by proxy, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Section 2.04 Organization.

(a) Meetings of stockholders shall be presided over by the Chairman of the Board of Directors, if any, or in his or her absence by a person designated by the Board of Directors, or in the absence of a person so designated by the Board of Directors, by a Chairman chosen at the meeting by the holders of a majority in voting power of the stock entitled to vote thereat, present in person or represented by proxy. The Secretary, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the Chairman of the meeting shall appoint, shall act as Secretary of the meeting and keep a record of the proceedings thereof.

(b) The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the Chairman of the meeting shall have the right and authority to

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prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such Chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted

proxies and such other persons as the Chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot.

Section 2.05 List of Stockholders. The officer who has charge of the stock ledger shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date. Such list shall be arranged in alphabetical order and shall show the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least 10 days prior to the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (b) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.05 or to vote in person or by proxy at any meeting of stockholders.

Section 2.06 Quorum. At any meeting of stockholders, the holders of a majority in voting power of all issued and outstanding stock entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business; provided, that where a separate vote by a class or series is required, the holders of a majority in voting power of all issued and outstanding stock of such class or series entitled to vote on such matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such matter. If a quorum is not present or represented at any meeting of stockholders, then the Chairman of the meeting or the holders of a majority in voting power of the stock entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time in accordance with Section 2.07, without notice other than announcement at the meeting and except as provided in Section 2.03(b), until a quorum is present or represented. If a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment may be transacted.

Section 2.07 Adjourned Meeting. Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned for any reason from time to time by either the Chairman of the meeting or the holders of a majority in voting power of the stock entitled to vote thereat, present in person or represented by proxy. At any such adjourned meeting at which a quorum may be present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.08 Voting.

(a) Except as otherwise provided by law or the Certificate of Incorporation, each holder of stock of the Corporation entitled to vote at any meeting of stockholders shall be entitled to one (1) vote for each share of such stock held of record by such holder on all matters submitted to a vote of stockholders of the Corporation.

(b) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall be authorized by the affirmative vote of the holders of a majority in voting power of the stock entitled to vote thereat, present in person or represented by proxy, and where a separate vote by class or series is required, if a quorum of such class or series is present, such act shall be authorized by the affirmative vote of the holders of a majority in voting power of the stock of such class or series entitled to vote thereat, present in person or represented by proxy.

Section 2.09 Proxies. Every person entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more agents authorized by a written proxy, which may be in the form of a telegram, cablegram or other means of electronic transmission, signed by the person and filed with the Secretary of the Corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy by the stockholder or the stockholder's attorney-in-fact. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary of the Corporation. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of such death or incapacity is received by the Corporation.

Section 2.10 Notice of Stockholder Business and Nominations.

(a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors or (C) by any stockholder of the Corporation who is a stockholder

of record at the time the notice provided for in this Section 2.10(a) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.10(a).

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of (x) the ninetieth (90th) day prior to such annual meeting or (y) the tenth (10th) day following the date on which public announcement (as defined below) of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director (x) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in

each case pursuant to and in accordance with Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and (y) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the business is proposed:

(1) the name and address of such stockholder, as they appear on the Corporation's books, and the name and address of such beneficial owner,

(2) the class and number of shares of capital stock of the Corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class and number of shares of capital stock of the Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting (except as otherwise provided in Section 2.10(a)(iii) below), and,

(3) a representation that the stockholder intends to appear in person or by proxy at the meeting to propose such nomination or business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the business is proposed, as to such beneficial owner:

(1) the class and number of shares of capital stock of the Corporation which are beneficially owned (as defined below) by such stockholder or beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class and number of shares of capital stock of the Corporation beneficially owned by such stockholder or beneficial owner as of the record date for the meeting (except as otherwise provided in Section 2.10(a)(iii) below),

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder or beneficial owner and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder or beneficial owner) and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting (except as otherwise provided in Section 2.10(a)(iii) below),

(3) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares)

that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder or beneficial owner, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class of the Corporation's capital stock, or maintain, increase or decrease the voting power of the stockholder or beneficial owner with respect to shares of stock of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting (except as otherwise provided in Section 2.10(a)(iii) below),

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation with respect to the nomination or business and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the business to be proposed (in person or by proxy) by the stockholder.

(iii) The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation, including information relevant to a determination whether such proposed nominee can be considered an independent director. Notwithstanding anything in Section 2.10(a)(ii) above to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 2.10(a) shall set forth a representation that the stockholder will notify the Corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10, and such information when provided to the Corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 2.10(a) shall not apply to a proposal or nomination proposed to be made by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal or nomination at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act or any other rule promulgated under Section 14 of the Exchange Act and such proposal or nominee has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(b) Special Meeting. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to

the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(b) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 2.10. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the notice required by paragraph (a)(ii) of this Section 2.10 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10h) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Except as otherwise provided by law, only such persons who are nominated in accordance with the procedures set forth in this Section 2.10 shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.10. The Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.10 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in compliance with such stockholder's representation as required by clause (a)(ii)(D)(4) of this Section 2.10). If any proposed nomination or business was not made or proposed in compliance with this Section 2.10, then except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, if the stockholder does not provide the information required under clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10 to the Corporation within the times frames specified herein, or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.10, to be considered a qualified

representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the making of such nomination or proposal at such meeting by such stockholder stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 2.10, a "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 2.10, shares shall be treated as "**beneficially owned**" by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (B) the right to vote such shares, alone or in concert with others and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

(iii) Nothing in this Section 2.10 shall be deemed to affect any rights of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Section 2.11 No Action by Written Consent. Subject to the rights of the holders of any series of preferred stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly held meeting of stockholders of the Corporation at which a quorum is present or represented, and may not be effected by any consent in writing by such stockholders.

Section 2.12 Inspectors of Election. Before any meeting of stockholders, the Board of Directors shall appoint one or more inspectors of election to act at the meeting or its adjournment. If any person appointed as inspector fails to appear or fails or refuses to act, then the Chairman of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy. Inspectors need not be stockholders. No director or nominee for the office of director shall be appointed such an inspector.

Such inspectors shall:

(a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;

(b) receive votes, ballots or consents;

(c) hear and determine all challenges and questions in any way arising in connection with the right to vote;

(d) count and tabulate all votes or consents;

(e) determine when the polls shall close;

(f) determine the result; and

(g) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. Any report or certificate made by the inspectors of election shall be prima facie evidence of the facts stated therein.

Section 2.13 Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the

Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication (a) participate in a meeting of stockholders and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

ARTICLE III.

DIRECTORS

Section 3.01 Powers. Subject to the provisions of the DGCL and to any limitations in the Certificate of Incorporation or these Bylaws relating to action required to be approved by the stockholders, the business and affairs of the Corporation shall be managed and shall be exercised by or under the direction of the Board of Directors. In addition to the powers and authorities these Bylaws expressly confer upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation or these Bylaws required to be exercised or done by the stockholders.

Section 3.02 Number, Term of Office and Election. Subject to the rights of the holders of any series of preferred stock to elect directors under specified circumstances, the Board of Directors shall consist of such number of directors as is fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Board of Directors.

With the exception of the first Board of Directors, which shall be elected by the incorporator, and except as provided in Section 3.03, directors shall be elected by a plurality of the votes cast at the stockholders' annual meeting in each year. Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws, wherein other qualifications for directors may be prescribed.

Section 3.03 Vacancies. Subject to the rights of the holders of any one or more series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise provided by law or by resolution of the Board of Directors, be filled solely by the affirmative vote of a majority of the remaining directors then in office, though less than a quorum, and directors so chosen shall hold office until the expiration of the term of office of the director whom he or she has replaced or until his or her successor shall be elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 3.04 Resignations and Removal.

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors or the Secretary. Such resignation shall take effect at the time specified in such notice or, if the time be not specified, upon receipt thereof by the Board of Directors, the Chairman of the Board of Directors or the Secretary, as the case may be. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Except for such additional directors, if any, as are elected by the holders of any series of preferred stock as provided for or fixed pursuant to the provisions of Article IV of the Certificate of Incorporation, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of at least 66 2/3% of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 3.05 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors; provided that no fewer than one regular meeting per year shall be held. A notice of each regular meeting shall not be required.

Section 3.06 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the Board of Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director as his or her residence or usual place of business, at least five (5) days before the day on which such meeting is to be held, or shall be sent to such director at such place

by telecopy, telegraph, electronic transmission or other form of recorded communication, or be delivered personally or by telephone, in each case at least twenty-four (24) hours prior to the time set for such meeting. Notice of any meeting need not be given to director who shall, either before or after the meeting, submit a waiver of such notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of notice to such director. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.07 Participation in Meetings by Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.08 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, a majority of the authorized number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors. The Chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. If a quorum initially is present at any meeting of directors, the directors may continue to transact business, notwithstanding the withdrawal of enough directors to leave less than a quorum, upon resolution of at least a majority of the required quorum for that meeting prior to the loss of such quorum.

Section 3.09 Board of Directors Action by Written Consent Without a Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, provided that all members of the Board of Directors consent in writing or by electronic transmission to such action, and the writing or writings or electronic transmission or transmissions are filed with the minutes or proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors.

Section 3.10 Chairman of the Board. The Chairman of the Board, if any, shall preside at meetings of stockholders (except as otherwise provided in Section 2.04(a)) and meetings of directors and shall perform such other duties as the Board of Directors may from time to time determine. If the Chairman of the Board is not present at a meeting of the Board of Directors, another director chosen by the Board of Directors shall preside.

Section 3.11 Rules and Regulations. The Board of Directors shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.12 Fees and Compensation of Directors. Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of

expenses as may be fixed or determined by resolution of the Board of Directors. This Section 3.12 shall not be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee or otherwise and receiving compensation for those services.

Section 3.13 Emergency Bylaws. In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate.

ARTICLE IV.

COMMITTEES

Section 4.01 Committees of the Board of Directors. The Board of Directors may, by resolution, designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.02 Meetings and Action of Committees. Any committee of the Board of Directors may adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper.

ARTICLE V.

OFFICERS

Section 5.01 Officers. The officers of the Corporation shall consist of a Chief Executive Officer, a Chief Financial Officer, a President, one or more Vice Presidents, a Secretary, a Treasurer, a Controller and such other officers as the Board of Directors may from

time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be chosen by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly chosen and qualified, or until such person's earlier death, disqualification, resignation or removal. Any two of such offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two or more officers.

Section 5.02 Compensation. The salaries of the officers of the Corporation and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors and may be altered by the Board of Directors from time to time as it deems appropriate, subject to the rights, if any, of such officers under any contract of employment.

Section 5.03 Removal, Resignation and Vacancies. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon written notice to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly chosen and qualified.

Section 5.04 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Chairman of the Board of Directors. Unless otherwise provided in these Bylaws, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders and of the Board of Directors.

Section 5.05 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.06 President. The President shall be the chief operating officer of the Corporation, with general responsibility for the management and control of the operations of the Corporation. The President shall have the power to affix the signature of the Corporation to all contracts that have been authorized by the Board of Directors or the Chief Executive Officer. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.07 Vice Presidents. The Vice President shall have such powers and duties as shall be prescribed by his or her superior officer or the Chief Executive Officer. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.08 Treasurer. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.09 Controller. The Controller shall be the chief accounting officer of the Corporation. The Controller shall, when requested, counsel with any advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or the Chief Financial Officer or as the Board of Directors may from time to time determine.

Section 5.10 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.11 Additional Matters. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.12 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.13 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.14 Action with Respect to Securities of Other Corporations. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

ARTICLE VI.

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.01 Right to Indemnification. Each person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in any action, suit, arbitration, alternative dispute mechanism, inquiry, judicial administrative or legislative hearing, investigation or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a "**proceeding**"), by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "**indemnitee**"), or by reason of anything done or not done by him or her in any such capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith; provided, however, that, except as provided in Section 6.03 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof (including claims and counterclaims), initiated by such indemnitee only if such proceeding (or part thereof) was authorized or ratified by the Board of Directors.

Section 6.02 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 6.01, an indemnitee shall, to the fullest extent not prohibited by law, also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "**advancement of expenses**"); provided, however, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking (hereinafter an

"**undertaking**"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal (hereinafter a "**final adjudication**") that such indemnitee is not entitled to be indemnified for such expenses under this Section 6.02 or otherwise.

Section 6.03 Right of Indemnitee to Bring Suit. If a request for indemnification under Section 6.01 is not paid in full by the Corporation within 60 days, or if a request for an advancement of expenses under Section 6.02 is not paid in full by the Corporation within 20 days, after a written request has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of expenses. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a

right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL. Further, in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI or otherwise shall be on the Corporation.

Section 6.04 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or directors, provisions of the Certificate of Incorporation or these Bylaws or otherwise.

Section 6.05 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.06 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VI with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 6.07 Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights that shall vest at the time an individual becomes a director or officer of the Corporation and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 6.08 Settlement of Claims. The Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding effected without the Corporation's written consent, which consent shall not be unreasonably withheld, or for any judicial award if the Corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such proceeding.

Section 6.09 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 6.10 Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the indemnitee to the fullest enforceable extent.

ARTICLE VII.

CAPITAL STOCK

Section 7.01 Certificates of Stock. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be

entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any or all such signatures may be facsimiles or other electronic formats. In case any officer, transfer agent or registrar who has signed or whose facsimile or other electronic signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 7.02 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 7.02 or Section 156, 202(a) or 218(a) of the DGCL or with respect to this Section 7.02 a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.03 Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful

restriction on transfer.

Section 7.04 Lost Certificates. The Corporation may issue a new share certificate or new certificate for any other security in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft

or destruction of any such certificate or the issuance of such new certificate. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.05 Addresses of Stockholders. Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to such stockholder and, if any stockholder shall fail to so designate such an address, corporate notices may be served upon such stockholder by mail directed to the mailing address, if any, as the same appears in the stock ledger of the Corporation or at the last known mailing address of such stockholder.

Section 7.06 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 7.07 Record Date for Determining Stockholders.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.08 Regulations. The Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

ARTICLE VIII.

GENERAL MATTERS

Section 8.01 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December of the same year, or such other twelve (12) consecutive months as the Board of Directors may designate..

Section 8.02 Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile or other electronic signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 8.03 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 8.04 Maintenance and Inspection of Records. The Corporation shall, either at its principal executive office or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books and other records.

Section 8.05 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 8.06 Time Periods. In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 8.07 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation and applicable law.

ARTICLE IX.

AMENDMENTS

Section 9.01 Amendments. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal these Bylaws. In addition to any requirements of law and any other provision of these Bylaws or the Certificate of Incorporation, and notwithstanding any other provision of these Bylaws, the Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of the holders of at least 66 2/3% in voting power of the issued and outstanding stock entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to amend or repeal, or adopt any provision inconsistent with, any provision of these Bylaws.

The foregoing Second Amended and Restated Bylaws are effective as of [·] [·], 2010.

Exhibit 10.1

AMENDMENT NO. 2 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 2 TO CREDIT AND GUARANTY AGREEMENT (this "Amendment"), dated as of April 16, 2010, is made and entered into among DOUGLAS DYNAMICS, L.L.C., a Delaware limited liability company (the "Borrower"), and each of the Lenders (as hereinafter defined) party hereto.

RECITALS

A. The Borrower and the Lenders party hereto are parties to that certain Credit and Guaranty Agreement dated as of May 21, 2007 (as amended by Amendment No. 1 to Credit and Guaranty Agreement, dated as of December 19, 2008 among the Borrower and each of the Lenders party thereto, the "Credit Agreement") among the Borrower, Credit Suisse AG, Cayman Islands Branch, as Administrative Agent (in such capacity, the "Administrative Agent") on behalf of the Lenders, each lender from time to time party thereto (the "Lenders") and each of the other banks, financial institutions and other entities from time to time party thereto.

B. The Borrower has requested that the Lenders agree, subject to the conditions and on the terms set forth in this Amendment, to amend certain provisions of the Credit Agreement as set forth herein.

C. The Lenders are willing to amend the Credit Agreement, subject to the conditions and on the terms set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and each of the Lenders party hereto agree as follows:

1. Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Amendment shall have the meanings given in the Amended Credit Agreement (as defined below), and the rules of interpretation set forth in the Amended Credit Agreement shall apply to this Amendment. In addition:

"Qualifying IPO" means the consummation of the first underwritten public offering of the Capital Stock (other than Disqualified Capital Stock) of Holdings following the Closing Date pursuant to a registration statement filed with the Securities and Exchange Commission in accordance with the Securities Act.

"Qualifying IPO Payment" means, concurrent with the closing of a Qualifying IPO, the one-time payment to Sponsor in connection with the termination of the Management Services Agreement in an aggregate amount not to exceed $6,000,000.

"Qualifying Preferred Stock Redemption" means, concurrent with the closing of a Qualifying IPO, the payment of $1,000 to Aurora Equity Partners II L.P. and $1,000 to Ares Limited Partnership in respect of the redemption of the one share of Series B Preferred Stock and Series C Preferred Stock held by Aurora Equity Partners II L.P. and the Ares Limited Partnership, respectively.

"Qualifying Senior Notes Redemption" means, concurrent with the closing of a Qualifying IPO, the Borrower and DD Finance (i) have given irrevocable and unconditional notice of redemption for all of the outstanding Senior Notes, (ii) have timely and irrevocably deposited or caused to be deposited with the trustee under the Senior Notes Indenture proceeds of a Qualifying IPO, proceeds of Additional Term Loans, Cash and/or Proceeds of Revolving Loans (as defined in the Revolving Credit Facility) sufficient to pay and discharge the entire indebtedness (including all principal, premium, if any, and accrued interest) on all outstanding Senior Notes and (iii) have satisfied all other conditions precedent to the discharge of the Senior Notes Indenture set forth in Section 8.8 of the Senior Notes Indenture.

2. Consent and Agreement. Notwithstanding anything to the contrary in the Credit Documents, the Lenders hereby consent to (i) the redemption of the Senior Notes by the Borrower pursuant to a Qualifying Senior Notes Redemption, (ii) the payment of the Qualifying IPO Payment and (iii) the redemption by Holdings of all preferred stock of Holdings pursuant to a Qualifying Preferred Stock Redemption. The Borrower hereby agrees to consummate a Qualifying Senior Notes Redemption concurrently with the consummation of a Qualifying IPO.

3. Amendment. Concurrently with the consummation of a Qualifying IPO, the terms and provisions of the Credit Agreement are hereby amended by replacing such terms and provisions in their entirety with the terms and provisions set forth in the Credit Agreement attached hereto as Exhibit A (the "Amended Credit Agreement").

4. Representations and Warranties. To induce the Lenders to agree to this Amendment, the Borrower represents to the Administrative Agent and the Lenders that as of the date hereof:

(a) the Borrower has all power and authority to enter into this Amendment and to carry out the transactions contemplated by, and to perform its obligations under or in respect of, this Amendment;

(b) the execution and delivery of this Amendment and the performance of the obligations of the Borrower hereunder have been duly authorized by all necessary action on the part of the Borrower;

(c) the execution and delivery of this Amendment by the Borrower, and the performance of the obligations of the Borrower hereunder do not and will not conflict with or violate (i) any provision of the articles of incorporation or bylaws (or similar constituent documents) of the Borrower, (ii) any applicable provision of any material law, statute, rule, regulation, order, writ, injunction or decree of any court or Governmental Authority or (iii) any indenture, agreement or instrument to which the Borrower is a party or by which the Borrower or any property of the Borrower, is bound, and do not and will not require any consent or approval of any Person that has not been obtained;

(d) this Amendment has been duly executed and delivered by the Borrower and the Credit Agreement and the other Credit Documents, as modified by this Amendment, are the legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

(e) no event has occurred and is continuing or will result from the execution and delivery of this Amendment or the consummation of a Qualifying IPO, the Qualifying IPO Payment, the Qualifying Senior Notes Redemption and/or the Qualifying Preferred Stock Redemption (in each case, after giving effect to this Amendment) that would constitute a Default or an Event of Default;

(f) since December 31, 2006, no event has occurred that has resulted, or could reasonably be expected to result, in a Material Adverse Effect;

(g) each of the representations and warranties made by the Borrower in or pursuant to the Credit Documents are true and correct in all material respects on and as of the date this representation is being made, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date;

(h) the Borrower has obtained $40 million in Additional Term Loan Commitments; and

(i) after giving effect to (i) a Qualifying IPO, (ii) the redemption of the Senior Notes by the Borrower pursuant to the Qualifying Senior Notes Redemption, (iii) the payment of the Qualifying IPO Payment, (iv) the redemption by Holdings of all preferred stock of Holdings pursuant to the Qualifying Preferred Stock Redemption and (v) the incurrence of $40 million aggregate principal amount of Additional Term Loan Commitments, the aggregate amount of (1) Cash of the Borrower in Deposit Accounts subject to a Blocked Account Agreement and (2) Excess Availability (as defined in the Revolving Credit Facility) shall be at least $15,000,000; provided, that Excess Availability will be calculated without giving effect to any Cash.

Each Lender party to this Amendment represents and warrants to each Agent and each Lender that it has made its own independent investigation of the terms of the Credit Agreement and the Amended Credit Agreement and the facts and circumstances surrounding this Amendment, and has not relied in any way on any statement, advice or recommendation of any Agent or Lender in connection herewith. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation on behalf of Lenders or to provide any Lender with any information, advice or recommendation with respect thereto, whether coming into its possession before the execution of this Amendment or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders relating to any of the foregoing.

5. Effectiveness of Amendments. This Amendment (other than Section 6 hereof which shall be effective as set forth in such Section) shall be effective as of the first date (the "Second Amendment Effective Date") on which all of the following conditions precedent have been satisfied:

(a) The Administrative Agent shall have received a counterpart signature page of this Amendment duly executed by each of the Credit Parties and the Requisite Lenders;

(b) The Administrative Agent shall have received a certificate signed by the chief financial officer of the Borrower dated the Second Amendment Effective Date, certifying (A) that the representations and warranties contained in Section 4 of this Amendment are true and correct as of the Second Amendment Effective Date and (B) that no event shall have occurred and be continuing or would result from the consummation of a Qualifying IPO, the Qualifying Senior Notes Redemption, the Qualifying Preferred Stock Redemption and/or the Qualifying IPO Payment (in each case, after giving effect to this Amendment) that would constitute a Default or an Event of Default;

(c) The Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), in connection with this Amendment (or shall have made arrangements for the payment thereof satisfactory to the Administrative Agent);

(d) a Qualifying IPO shall have occurred;

(e) Borrower shall have delivered or cause to be delivered any legal opinions or other documents requested by Administrative Agent connection with the making of the Additional Term Loans;

(f) Each Credit Party shall have delivered a solvency certificate in form and substance satisfactory to the Administrative Agent; and

(g) Borrower shall pay, to each Lender executing this Amendment on or before April 16, 2010 by 12:00 p.m. New York City Time, an amendment fee equal to 0.25% of such Lender's Term Loan Exposure (before giving effect to the making of any Additional Term Loans), which amendment fee shall be payable concurrently with the consummation of the Qualifying IPO.

6. Delivery of Financial Statements. Notwithstanding the provisions set forth in Section 5.1(c) of the Credit Agreement to the contrary, the financial statements of Holdings and its Subsidiaries for the Fiscal Year ended December 31, 2009 that were delivered to the Administrative Agent prior to the date hereof shall be deemed to satisfy the requirements of Section 5.1(c) that such financial statements be of the Company and its Subsidiaries solely with respect to the Fiscal Year ended December 31, 2009. Notwithstanding the provisions set forth in Section 5.1(b) of the Credit Agreement requiring delivery of certain financial statements of the Company and its Subsidiaries, delivery of comparable financial statements of Holdings and its Subsidiaries shall be deemed to satisfy such requirement solely with respect to the Fiscal Quarters ending March 31, 2010 and June 30, 2010. Notwithstanding the provisions of Section 5 of this Amendment, the provisions of this Section 6 shall be effective immediately upon receipt by Administrative Agent of a counterpart signature page of this Amendment duly executed by each of the Credit Parties and the Requisite Lenders.

7. Miscellaneous. **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).** This Amendment may be executed in one or more duplicate counterparts and when signed by all of the parties listed below shall constitute a single binding agreement. Except for the amendments set forth in Section 3 hereof and the consent set forth in Section 2 hereof, all of the provisions of the Credit Agreement and the other Credit Documents shall remain in full force and effect. The foregoing amendments shall be strictly construed in accordance with the express terms thereof. Except with respect to the matters specifically waived or amended thereby, Section 2 and 3 above shall not operate as a waiver of any right, remedy, power or privilege of any Lender or the Administrative Agent under the Credit Agreement or any other Credit Document or of any other term or condition of the Credit Agreement or any other Credit Document. This Amendment shall be deemed a "Credit Document" as defined in the Credit Agreement. Sections 10.15 and 10.16 of the Credit Agreement shall apply to this

Amendment and all past and future amendments to the Credit Agreement and other Credit Documents as if expressly set forth herein or therein.

8. Additional Term Loans. Concurrent with the occurrence of the Second Amendment Effective Date, the Persons party to a Term Loan Joinder Agreement as lenders (each an "Additional Term Loan Lender") shall make Term Loans (the "Additional Term Loans") to the Borrower in an amount equal to the amount set forth in such Additional Term Loan Lender's Term Loan Joinder Agreement (the "Additional Term Loan Commitments"); provided, that such Additional Term Loans shall be made with 1% of original issue discount, such that the amount funded on the Second Amendment Effective Date by each Lender in respect of its Additional Term Loans shall be 99% of its Additional Term Loan Commitment. The aggregate amount of the Additional Term Loan Commitments is $40,000,000. Such Additional Term Loan Commitments shall be effected pursuant to one or more Term Loan Joinder Agreements executed and delivered by Borrower, each Additional Term Loan Lender and Administrative Agent, and each of which shall be recorded in the Register and shall be subject to the requirements set forth in Section 2.19(c) of the Amended Credit Agreement. The amount of each Additional Term Loan owing to each Additional Term Loan Lender as of the Second Amendment Effective Date (before giving effect to any

subsequent repayments) shall be an amount equal to 100% of such Additional Term Loan Lender's Additional Term Loan Commitment, irrespective that the amount funded on the Second Amendment Effective Date is 99% of such Additional Term Loan Commitment. The terms of the Additional Term Loan Commitments shall be as set forth in the Amended Credit Agreement.

9. Acknowledgement and Consent.

Each Guarantor has read this Amendment and consents to the terms hereof and further hereby confirms and agrees that, notwithstanding the effectiveness of this Amendment, the obligations of such Guarantor under, and the Liens granted by such Guarantor as collateral security for the indebtedness, obligations and liabilities evidenced by the Credit Agreement and the other Credit Documents pursuant to, each of the Credit Documents to which such Guarantor is a party shall not be impaired and each of the Credit Documents to which such Guarantor is a party is, and shall continue to be, in full force and effect and is hereby confirmed and ratified in all respects. Each of Holdings, Borrower and the Guarantor Subsidiaries hereby acknowledges and agrees that the Secured Obligations under, and as defined in, the Term Pledge and Security Agreement dated as of May 21, 2007, by and among Holdings, Borrower, the Guarantor Subsidiaries and Administrative Agent (the "Pledge and Security Agreement") and, with respect to the other Collateral Documents, the Obligations secured by the Liens granted thereby, will include all Obligations under, and as defined in, the Amended Credit Agreement.

Each Guarantor acknowledges and agrees that (i) notwithstanding the conditions to effectiveness set forth in this Amendment, such Guarantor is not required by the terms of the Credit Agreement or any other Credit Document to consent to the amendments to the Credit Agreement effected pursuant to this Amendment and (ii) nothing in the Credit Agreement, this Amendment or any other Credit Document shall be deemed to require the consent of such Guarantor to any future amendments to the Credit Agreement.

10. Consent to ABL Amendment and Intercreditor Amendment.

(a) Pursuant to Section 5.3(a) of the Intercreditor Agreement, the Lenders party hereto hereby consent to (i) an amendment to the ABL Credit Agreement (as defined in the Intercreditor Agreement) in substantially the form of Exhibit B and (ii) any amendments to the other ABL Loan Documents (as defined in the Intercreditor Agreement) executed in connection therewith; and

(b) The Lenders party hereto hereby consent to the execution of an amendment to the Intercreditor Agreement in substantially the form of Exhibit C (the "Intercreditor Amendment") and hereby authorize and instruct (i) the Administrative Agent to execute the Intercreditor Amendment in its capacity as Term Administrative Agent thereunder and (ii) the Collateral Agent to execute the Intercreditor Amendment in its capacity as Term Collateral Agent thereunder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BORROWER:

DOUGLAS DYNAMICS, L.L.C.

By: /s/ Robert McCormick
Name: Robert McCormick
Title: VP CFO

GUARANTORS (for purposes of Section 9):

DOUGLAS DYNAMICS, INC.

By: /s/ Robert McCormick
Name: Robert McCormick
Title: VP CFO

DOUGLAS DYNAMICS FINANCE COMPANY

By: /s/ Robert McCormick
Name: Robert McCormick
Title: VP CFO

FISHER, LLC

By: /s/ Robert McCormick
Name: Robert McCormick
Title: VP CFO

Russell Investment Company plc, as a Lender

By: /s/ Michael Bishof
Name: Michael Bishof
Title: COO, Logan Circle Partners

Amendment No. 2

Russell Multi-Manager Bond Fund, as a Lender

By: /s/ Michael Bishof
Name: Michael Bishof
Title: COO, Logan Circle Partners

Amendment No. 2

Russell Strategic Bond Fund, as a Lender

By: /s/ Michael Bishof
Name: Michael Bishof
Title: COO, Logan Circle Partners

Amendment No. 2

Russell Institutional Funds, LLC – Russell Core Bond Fund, as a Lender

By: /s/ Michael Bishof
Name: Michael Bishof
Title: COO, Logan Circle Partners

Amendment No. 2

Integrys Energy Group, Inc. Retirement Plan Trust, as a Lender

By: /s/ Michael Bishof
Name: Michael Bishof
Title: COO, Logan Circle Partners

Amendment No. 2

Allina Health System Trust, as a Lender

By: /s/ Michael Bishof
Name: Michael Bishof
Title: COO, Logan Circle Partners

Amendment No. 2

Sunoco Inc Master Retirement Trust, as a Lender

By: /s/ Michael Bishof
Name: Michael Bishof
Title: COO, Logan Circle Partners

Amendment No. 2

Atrium VI

By: Credit Suisse Alternative Capital, Inc., as collateral manager

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Atrium IV

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Madison Park Funding IV, Ltd.
By Credit Suisse Alternative Capital, Inc., as collateral manager

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Atrium III

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

CSAM Funding III

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

CSAM Funding IV

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Madison Park Funding I, Ltd,

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Madison Park Funding III, Ltd.
By Credit Suisse Alternative Capital, Inc., as collateral manager

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Madison Park Funding VI, Ltd.
By: Credit Suisse Alternative Capital, Inc., as collateral manager

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Credit Suisse Syndicated Loan Fund
By: Credit Suisse Alternative Capital, Inc., as Agent (Subadviser) for Credit Suisse Asset Management (Australia) Limited, the Responsible Entity for Credit Suisse Syndicated Loan Fund

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Castle Garden Funding

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner

Title: Authorized Signatory

Amendment No. 2

Madison Park Funding V, Ltd.
By: Credit Suisse Alternative Capital, Inc., as collateral manager

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Atrium V
By: Credit Suisse Alternative Capital, Inc., as collateral manager

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

Madison Park Funding II, Ltd.
By Credit Suisse Alternative Capital, Inc. as collateral manager

as a Lender

By: /s/ David H. Lerner
Name: David H. Lerner
Title: Authorized Signatory

Amendment No. 2

WHITNEY CLO I,
as a Lender

By: /s/ John M. Casparian
Name: John M. Casparian
Title: Co-President

Churchill Pacific Asset Management LLC

SIERRA CLO II,
as a Lender

By: /s/ John M. Casparian
Name: John M. Casparian
Title: Co-President

Churchill Pacific Asset Management LLC

SHASTA CLO I,
as a Lender

By: /s/ John M. Casparian
Name: John M. Casparian
Title: Co-President

Churchill Pacific Asset Management LLC

SAN GABRIEL CLO I,
as a Lender

By: /s/ John M. Casparian
Name: John M. Casparian
Title: Co-President

Churchill Pacific Asset Management LLC

OLYMPIC CLO I,
as a Lender

By: /s/ John M. Casparian
Name: John M. Casparian
Title: Co-President

Churchill Pacific Asset Management LLC

KINGSLAND I, LTD.,
as a Lender

By: Kingsland Capital Management, LLC as Manager

By: /s/ Vincent Siino
Name: Vincent Siino
Title: Authorized Officer

KINGSLAND II, LTD.,
as a Lender

By: Kingsland Capital Management, LLC as Manager

By: /s/ Vincent Siino
Name: Vincent Siino
Title: Authorized Officer

KINGSLAND IV, LTD.,
as a Lender

By: Kingsland Capital Management, LLC as Manager

By: /s/ Vincent Siino
Name: Vincent Siino
Title: Authorized Officer

KINGSLAND V, LTD.,
as a Lender

By: Kingsland Capital Management, LLC as Manager

By: /s/ Vincent Siino
Name: Vincent Siino
Title: Authorized Officer

Amendment No. 2

Sands Point Funding Ltd.,
as a Lender

By: Guggenheim Investment Management, LLC as Collateral Manager

By: /s/ Kaitlin Trinh
Name: KAITLIN TRINH
Title: DIRECTOR

Amendment No. 2

Green Lane CLO Ltd.,
as a Lender

By: Guggenheim Investment Management, LLC as Collateral Manager

By: /s/ Kaitlin Trinh
Name: KAITLIN TRINH
Title: DIRECTOR

Amendment No. 2

Kennecott Funding Ltd..,
as a Lender

By: Guggenheim Investment Management, LLC as Collateral Manager

By: /s/ Kaitlin Trinh
Name: KAITLIN TRINH
Title: DIRECTOR

Amendment No. 2

1888 Fund, Ltd.,
as a Lender

By: Guggenheim Investment Management, LLC as Collateral Manager

By: /s/ Kaitlin Trinh
Name: KAITLIN TRINH
Title: DIRECTOR

Amendment No. 2

Copper River CLO Ltd.,
as a Lender

By: Guggenheim Investment Management, LLC as Collateral Manager

By: /s/ Kaitlin Trinh
Name: KAITLIN TRINH
Title: DIRECTOR

MARLBOROUGH STREET CLO, LTD.,
By its Collateral Manager, Massachusetts Financial Services Company, as a Lender

By: /s/ David Cobey
Name: David Cobey
Title: As authorized representative and not individually

Amendment No. 2

Morgan Stanley Investment
Management Croton, Ltd.
By: Morgan Stanley Investment Management Inc. as Collateral Manager

By: /s/ Robert Drobny
Name: ROBERT DROBNY
Title: Executive Diretor

Amendment No. 2

ARES IIIR/IVR CLO LTD., as a Lender
ARES VII CLO LTD., as a Lender
ARES VIII CLO LTD., as a Lender
ARES XI CLO LTD., as a Lender

ARES IIIR/IVR CLO LTD.
BY: ARES CLO MANAGEMENT IIIR/IVR, L.P., ITS ASSET MANAGER

BY: ARES CLO GP IIIR/IVR, LLC, ITS GENERAL PARTNER
BY: ARES MANAGEMENT LLC, ITS MANAGER

By: /s/ Seth Brufsky
Name: Seth Brufsky
Title: Vice President

ARES VII CLO LTD.

BY: ARES CLO MANAGEMENT VII, L.P., ITS INVESTMENT MANAGER

BY: ARES CLO GP VII, LLC, ITS GENERAL PARTNER

BY: ARES MANAGEMENT LLC, ITS MANAGER

By: /s/ Seth Brufsky
Name: Seth Brufsky
Title: Vice President

Amendment No. 2

ARES VIII CLO LTD.

BY: ARES CLO MANAGEMENT VIII, L.P., ITS INVESTMENT MANAGER

BY: ARES CLO GP VIII, LLC, ITS GENERAL PARTNER

BY: ARES MANAGEMENT LLC, ITS MANAGER

By: /s/ Seth Brufsky
Name: Seth Brufsky
Title: Vice President

ARES XI CLO LTD.

By: ARES CLO MANAGEMENT XI, L.P., ITS ASSET MANAGER

By: ARES CLO GP XI, LLC, ITS GENERAL PARTNER

By: ARES MANAGEMENT LLC, ITS MANAGER

By: /s/ Seth Brufsky
Name: Seth Brufsky
Title: Vice President

Amendment No. 2

Apidos CINCO CDO
as a Lender

By its Investment Advisor Apidos Capital Management, LLC

By: /s/ Gretchen Bergstresser
Name: Gretchen Bergstresser
Title: Sr. Portfolio Manager

Amendment No. 2

Avery Point CLO, Limited
By: Sankaty Advisors LLC,
as Collateral Manager

By: /s/ Andrew S. Viens
Name: Andrew S. Viens
Title: Sr. Vice President of Operations

Amendment No. 2

Castle Hill II-Ingots, Ltd
By: Sankaty Advisors LLC,
as Collateral Manager

By: /s/ Andrew S. Viens
Name: Andrew S. Viens
Title: Sr. Vice President of Operations

Amendment No. 2

Race Point II CLO, Limited
By: Sankaty Advisors LLC,
as Collateral Manager

By: /s/ Andrew S. Viens
Name: Andrew S. Viens
Title: Sr. Vice President of Operations

Amendment No. 2

Race Point IV CLO, Ltd
By: Sankaty Advisors LLC,
as Collateral Manager

By: /s/ Andrew S. Viens

Name: Andrew S. Viens

Title: Sr. Vice President of Operations

Amendment No. 2

SSS Funding II, LLC
By: Sankaty Advisors LLC,
as Collateral Manager

By: /s/ Andrew S. Viens
Name: Andrew S. Viens
Title: Sr. Vice President of Operations

Amendment No. 2

[The Prudential Insurance Company of America],
as a Lender

By: /s/ Stephen J. Collins

Name: Stephen J. Collins

Title: Prudential Investment Management, Inc., as investment advisor

Amendment No. 2

ACKNOWLEDGED:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as the Administrative Agent

By: /s/ William O'Daly
Name: William O'Daly
Title: Director

By: /s/ Ilya Ivashkov
Name: Ilya Ivashkov
Title: Associate

Amendment No. 2

Exhibit A

Amended Credit Agreement

See attached.

Amendment No. 2

EXHIBIT A to Amendment No. 2

COMPOSITE CREDIT AGREEMENT
(as amended by Amendment No. 1, dated as of December 19, 2008
and Amendment No. 2, dated as of April 16, 2010)

CREDIT AND GUARANTY AGREEMENT

dated as of May 21, 2007

among

DOUGLAS DYNAMICS, L.L.C.

as Borrower

DOUGLAS DYNAMICS, INC.,
DOUGLAS DYNAMICS FINANCE COMPANY,

FISHER, LLC

as Guarantors,

THE BANKS AND FINANCIAL INSTITUTIONS LISTED HEREIN,
as Lenders,

CREDIT SUISSE SECURITIES (USA) LLC,
as Sole Bookrunner and Sole Lead Arranger,

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Collateral Agent, Administrative Agent,
Syndication Agent and Documentation Agent

Senior Secured Term Loan Facility

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CREDIT AND GUARANTY AGREEMENT

CREDIT AND GUARANTY AGREEMENT, dated as of May 21, 2007 (the "**Agreement**"), by and among Douglas Dynamics, Inc., a Delaware corporation ("**Holdings**"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "**Company**" or the "**Borrower**"), Fisher, LLC, a Delaware limited liability company ("**Fisher**") and Douglas Dynamics Finance Company, a Delaware corporation ("**DD Finance,**" and together with Fisher and Holdings, each a "**Guarantor**" and collectively the "**Guarantors**") the banks and financial institutions listed on the signature pages hereof (together with their respective successors and assigns, each individually referred to herein as a "**Lender**" and collectively as "**Lenders**"), Credit Suisse AG, Cayman Islands Branch("**Credit Suisse**"), as sole bookrunner and sole lead arranger (the "**Arranger**"), Credit Suisse, as syndication agent ("**Syndication Agent**"), Credit Suisse, as documentation agent (the "**Documentation Agent**"), Credit Suisse as collateral agent for the Lenders (in such capacity, the "**Collateral Agent**") and Credit Suisse as administrative agent for the Lenders (in such capacity, "**Administrative Agent**").

RECITALS:

WHEREAS, the Borrower has requested, and the Lenders have agreed, to extend certain credit facilities to the Borrower on the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"**ABL Priority Collateral**" has the meaning assigned to that term in the Intercreditor Agreement.

"**Accepting Lenders**" has the meaning assigned to that term in Section 2.14(d).

"**Additional Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund any Additional Term Loan and "**Additional Term Loan Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender's Additional Term Loan Commitment, if any, is set forth in the Second Amendment or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof.

"**Additional Term Loan Lender**" means a Lender that becomes a party hereto pursuant to the Term Loan Joinder Agreement.

"**Additional Term Loan Maturity Date**" means May 21, 2016.

"**Additional Term Loans**" means the Term Loans made pursuant to the Second Amendment and the Term Loan Joinder Agreement on the Second Amendment Effective Date.

"**Administrative Agent**" has the meaning assigned to that term in the preamble hereto.

"**Adjusted Eurodollar Rate**" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the greater of (1) 2.00% per annum and (2) the rate per annum obtained by dividing (i) (a) the rate per annum determined by the Administrative Agent by reference to the British Bankers' Association Interest Settlement Rates for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date (as set forth by Bloomberg Information Service or any successor thereto or any other service selected by Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates), or (b) in the event the rate referenced in the preceding clause (a) is not available, the rate per annum equal to the offered quotation rate to first class banks in the London interbank market by Credit Suisse for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Administrative Agent, in its capacity as a Lender, for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Holdings or any of its Subsidiaries, threatened against or affecting Holdings or any of its Subsidiaries or any property of Holdings or any of its Subsidiaries.

"**Affected Lender**" has the meaning assigned to that term in Section 2.17(b).

"**Affected Loans**" has the meaning assigned to that term in Section 2.17(b).

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"**Agent**" means each of Administrative Agent, Collateral Agent, Syndication Agent and Documentation Agent.

"**Aggregate Amounts Due**" has the meaning assigned to that term in Section 2.16.

"**Aggregate Payments**" has the meaning assigned to that term in Section 7.2.

"**Agreement**" has the meaning assigned to that term in the preamble hereto.

"**Applicable Margin**" means a percentage, per annum, equal to:

	Base Rate Loans	Eurodollar Rate Loans
Term Loans (other than Additional Term Loans)	3.50 %	4.50 %
Additional Term Loans	4.00 %	5.00 %

"**Applicable Reserve Requirement**" means, at any time, for any Eurodollar Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including, without limitation, any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained by any member bank of the Federal Reserve System against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors of the Federal Reserve System or any successor thereto. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted Eurodollar Rate is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Eurodollar Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurodollar Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"**Ares Group Investors**" means (i) the Ares Corporate Opportunities Fund, L.P. (the "**Ares Limited Partnership**"), (ii) ACOF Management, L.P., (iii) ACOF Operating Manager, L.P., (iv) Ares Management, Inc., (v) Ares Management LLC, (vi) any limited partners of any of the foregoing entities and (vii) partners, members, managing directors, officers or employees of any of those entities referenced in clauses (ii) through (v), provided that each Person set forth in clauses (vi) and (vii) shall only constitute an Ares Group Investor so long as it gives a proxy to, or otherwise agrees that it will vote in a manner consistent with, the Ares Limited Partnership (except to the extent otherwise required by ERISA or other applicable law) and the entity to which it is required to give a proxy to or otherwise vote consistently with continues to own Capital Stock in Parent.

"**Arranger**" has the meaning assigned to that term in the preamble hereto.

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person (other than the Borrower or any Guarantor Subsidiary), in one transaction or a series of transactions, of all or any part of Holdings', Company's, or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of any of Holdings' Subsidiaries, other than (i) inventory sold or leased in the ordinary course of business (excluding any such sales by operations or divisions discontinued or to be discontinued), (ii) equipment that is surplus, obsolete, worn-out, or no longer used or useful in the business of Holdings, Company or any of its Subsidiaries, (iii) leasehold interests that are no longer used or useful in the business of Holdings, Company or any of its Subsidiaries, (iv) dispositions, by means of trade-in, of equipment used in the ordinary course of business, so long as such equipment is replaced, substantially concurrently, by like-kind equipment in an effort to upgrade the Facilities of Company and its Subsidiaries, (v) Cash and Cash Equivalents used in a manner not prohibited by the Credit Documents or the Revolving Credit Documents, and (vi) sales of other assets for aggregate consideration of less than $1,000,000 with respect to any transaction or series of

related transactions and less than $3,000,000 in the aggregate during any calendar year (provided, that for purposes of calculating the amounts set forth in this clause (vi), any transactions or series of related transactions involving aggregate consideration of $50,000 or less may be excluded).

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of Exhibit E, with such amendments or modifications as may be approved by Administrative Agent.

"**Attributable Indebtedness**" in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP.

"**Aurora Group Investors**" means (i) Aurora Equity Partners II L.P. and Aurora Overseas Equity Partners II, L.P. (the "**Limited Partnerships**"), (ii) Aurora Capital Partners II L.P. and Aurora Overseas Capital Partners II, L.P. (the "**General Partners**"), (iii) Aurora Advisors II LLC and Aurora Overseas Advisors, II, LDC (the "**Ultimate General Partners**"), (iv) any limited partners of the Limited Partnerships or any limited partners of the General Partners,provided that such limited partner gives a proxy to, or otherwise agrees that it will vote in a manner consistent with, the Limited Partnerships (except to the extent otherwise required by ERISA or other applicable law) or the General Partners, (v) any managing director or employee of Aurora Management Partners LLC, provided that such managing director or employee gives a proxy to, or otherwise agrees that he or she will vote in a manner consistent with the Limited Partnerships (except to the extent otherwise required by ERISA or other applicable law) or the General Partners, (vi) any member of the Advisory Board of Aurora Management Partners LLC, provided that such member gives a proxy to, or otherwise agrees that he or she will vote in a manner consistent with, the Limited Partnerships (except to the extent otherwise required by ERISA or other applicable law) or the General Partners, (vii) any Affiliate of Aurora

Management Partners LLC, provided that such Affiliate gives a proxy to, or otherwise agrees that it will vote in a manner consistent with, the Limited Partnerships or the General Partners, and (viii) any investment fund or other entity controlled by or under common control with, any one or more of the Ultimate General Partners or Aurora Management Partners LLC or the principals that control any one or more of the Ultimate General Partners or Aurora Management Partners LLC; provided that each Person set forth in clauses (iv) through (viii) shall only constitute an Aurora Group Investor so long as the entity to which it is required to give a proxy to or otherwise vote consistently with continues to own Capital Stock in Parent.

"**Authorized Officer**" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), and such Person's chief financial officer or treasurer.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Base Rate**" means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, and (iii) 3.00%.

"**Base Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"**Blocked Account**" means any Deposit Account subject to a Blocked Account Agreement.

"**Blocked Account Agreement**" means an account control agreement on terms reasonably satisfactory to the Collateral Agent.

"**Beneficiary**" means each Agent, Lender and Lender Counterparty.

"**Borrower**" has the meaning assigned to that term in the preamble hereto.

"**Business Day**" means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the States of New York or Wisconsin or is a day on which banking institutions located in either such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted Eurodollar Rate or any Eurodollar Rate Loans, the term "**Business Day**" shall mean any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"**Cash**" means money, currency or a credit balance in any demand or deposit account.

"**Cash Equivalents**" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit, time deposits or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (v) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"**Certificate re Non-Bank Status**" means a certificate substantially in the form of Exhibit F.

"**Change of Control**" means, at any time, (i) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) other than Sponsor beneficially owns, directly or indirectly, more than 35%, on a fully diluted basis, of the outstanding Capital Stock (measured only by voting power) of Holdings entitled (without regard to the occurrence of any contingency) to vote for the election of members of the board of directors (or similar governing body) of Holdings, unless Sponsor beneficially owns and controls, on a fully diluted basis, more of the outstanding Capital Stock (measured only by voting power) of Holdings entitled (without regard

to the occurrence of any contingency) to vote for the election of members of the board of directors (or similar governing body) of Holdings than any other Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act); or (ii) Holdings shall cease to beneficially own and control 100% on a fully diluted basis of the economic and voting interests in the Capital Stock of Company.

"**Change in Law**" has the meaning assigned to that term in Section 2.18(a).

"**Closing Date**" means May 21, 2007.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"**Collateral Agent**" has the meaning assigned to that term in the preamble hereto.

"**Collateral Documents**" means the Pledge and Security Agreement, the Mortgages, the Blocked Account Agreements, the Intercreditor Agreement and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to Collateral Agent, for the benefit of Lenders, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations (or to perfect any Liens so granted).

"**Commitment**" means any Term Loan Commitment.

"**Company**" has the meaning assigned to that term in the preamble hereto.

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit C.

"**Consolidated Adjusted EBITDA**" means, for any period, an amount determined for Company and its Subsidiaries on a consolidated basis equal to the total of (a) Consolidated Net Income, plus (b) the sum, without duplication, of each of the following to the extent deducted in the calculation of Consolidated Net Income for such period (i) Consolidated Interest Expense and non-Cash interest expense, (ii) provisions for taxes based on income, (iii) total depreciation expense, (iv) total amortization expense (including amortization of goodwill, other intangibles, and financing fees and expenses), (v) non-cash impairment charges, (vi) non-cash expenses resulting from the grant of stock and stock options and other compensation to management personnel of Company and its Subsidiaries pursuant to a written incentive plan or agreement, (vii) other non-Cash items that are unusual or otherwise non-recurring items, (viii) expenses or fees under the Management Services Agreement, as in effect on December 16, 2004 including any payments made under the Management Services Agreement and comprising all or any portion of the Qualifying IPO Payment, (ix) any extraordinary losses and non-recurring charges during any period (including severance, relocation costs, one-time compensation charges and losses or charges associated with Interest Rate Agreements), (x) restructuring charges or reserves (including costs related to closure of Facilities), (xi) any transaction costs incurred in connection with the issuance of Securities or any refinancing transaction, in each case whether or not such transaction is consummated, (xii) any fees and expensed related to any Permitted Acquisitions and (xiii) fees, expenses and other transaction costs incurred by Company and its Subsidiaries during such period in connection with the transactions contemplated by the First Amendment to Revolving Credit Facility, the Second Amendment and the Qualifying IPO minus (c) the sum, without duplication, of (i) non-Cash items increasing Consolidated Net Income for such period that are unusual or otherwise non-recurring items, (ii) cash payments made during such period reducing reserves or liabilities for accruals made in prior periods but only to the extent such reserves or accruals were

added back to "Consolidated Adjusted EBITDA" in a prior period pursuant to clause (b)(vii) or (b)(viii) above, and (iii) Restricted Payments made during such period to Holdings pursuant to Section 6.5(c)(i) (other than any such Restricted Payments made to Holdings pursuant to Section 6.5(c)(i) for the purpose of paying fees, expenses and other transaction costs paid in cash during such period in connection with the transactions contemplated by the First Amendment to Revolving Credit Facility, the Second Amendment and the Qualifying IPO).

"**Consolidated Capital Expenditures**" means, for any period, the aggregate of all expenditures of Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of Company and its Subsidiaries, but excluding expenditures constituting the purchase price for Permitted Acquisitions and amounts constituting Net Asset Sale Proceeds and Net Insurance/Condemnation Proceeds which are reinvested in the business of Company and its Subsidiaries in accordance with Section 2.13(a) or Section 2.13(b), respectively, by Company and its Subsidiaries during such period.

"**Consolidated Coverage Ratio**" on any date of determination (the "**Transaction Date**") means the ratio, on a *pro forma* basis, of (a) the aggregate amount of Consolidated Adjusted EBITDA for the Test Period to (b) the aggregate Consolidated Fixed Charges during the Test Period; *provided*, that for purposes of such calculation: (1) Permitted Acquisitions which occurred during the Test Period or subsequent to the Test Period and on or prior to the Transaction Date shall be assumed to have occurred on the first day of the Test Period, (2) transactions giving rise to the need to calculate the Consolidated Coverage Ratio and the application of the proceeds therefrom (except as otherwise provided in this definition) shall be assumed to have occurred on the first day of the Test Period, (3) the incurrence of any Indebtedness (including the issuance of any Disqualified Capital Stock) during the Test Period or subsequent to the Test Period and on or prior to the Transaction Date (and the application of the proceeds therefrom to the extent used to refinance or retire other Indebtedness) (other than ordinary working capital borrowings) shall be assumed to have occurred on the first day of the Test Period, (4) the permanent repayment of any Indebtedness (including the redemption of any Disqualified Capital Stock) during the Test Period or subsequent to the Test Period and on or prior to the Transaction Date (other than ordinary working capital borrowings) shall be assumed to have occurred on the first day of the Test Period, (5) the Consolidated Fixed Charges attributable to interest on any Indebtedness or dividends on any Disqualified Capital Stock bearing a floating interest (or dividend) rate shall be computed on a *pro forma* basis as if the average rate in effect from the beginning of the Test Period to the Transaction Date had been the applicable rate for the entire period, unless Company or any of its Subsidiaries is a party to a Hedge Agreement (which shall remain in effect for the 12-month period immediately following the Transaction Date) that has the effect of fixing the interest rate on the date of computation, in which case such rate (whether higher or lower) shall be used, and (6) amounts attributable to operations or businesses permanently discontinued or disposed of prior to the Transaction Date, shall be excluded, except, in the case of a determination of Consolidated Fixed Charges, only to the extent that the obligations giving rise to such Consolidated Fixed Charges would no longer be obligations contributing to Consolidated Fixed Charges subsequent to the Transaction Date.

"Consolidated Current Assets" means, as at any date of determination, the total assets of Company and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"Consolidated Current Liabilities" means, as at any date of determination, the total liabilities of Company and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

"**Consolidated Excess Cash Flow**" means, for any period, an amount (if positive) equal to:(i) the sum, without duplication, of the amounts for such period of (a) Consolidated Adjusted EBITDA, plus (b) the Consolidated Working Capital Adjustment, minus (ii) the sum, without duplication, of the amounts for such period of (a) voluntary and scheduled repayments of Consolidated Total Debt (excluding voluntary repayments financed with Indebtedness), (b) cash Consolidated Capital Expenditures (net of any proceeds of (y) any related financings with respect to such expenditures and (z) to the extent not excluded in the calculation of Consolidated Capital Expenditures, any sales of capital assets used to finance such expenditures), (c) Consolidated Interest Expense paid in cash for such period, (d) the portion of taxes based on income actually paid in cash during such period by Company or any of its Subsidiaries whether for such period or any other period, (e) Restricted Payments made under Sections 6.5(c)(ii)-(iv) during such period, (f) Restricted Payments or Investments made under Section 6.5(d)(i), Section 6.5(f), Section 6.7(l) and Section 6.7(m), as applicable, and which are for any Fiscal Year, declared (in the case of dividends or distributions) or paid in cash from June 1 of the applicable Fiscal Year to and including May 31 of the immediately following Fiscal Year, (g) Restricted Payments made to Holdings pursuant to Section 6.5(c)(i) for the purpose of paying fees, expenses and other transaction costs paid in cash during such period in connection with the transactions contemplated by the Second Amendment, the First Amendment to Revolving Credit Facility and the Qualifying IPO and (h) fees, expenses and other transaction costs paid in cash by Company and its Subsidiaries during such period in connection with the transactions contemplated by the First Amendment to Revolving Credit Facility, the Second Amendment and the Qualifying IPO. Consolidated Excess Cash Flow shall not be reduced by the amount of any Permitted Loan Purchase.

"**Consolidated Fixed Charges**" means, for any period, the sum, without duplication, of the amounts determined for Company and its Subsidiaries on a consolidated basis equal to (i) Consolidated Interest Expense for such period, (ii) scheduled payments for such period of principal on Consolidated Total Debt, (iii) Consolidated Capital Expenditures for such period other than those financed with secured Indebtedness permitted by Sections 6.1 and 6.2 or made or incurred pursuant to Section 6.8(b)(ii) of the Revolving Credit Facility, (iv) the portion of taxes based on income actually paid in cash during such period by Company or any of its Subsidiaries whether for such period or any other period and (v) Restricted Payments permitted under Section 6.5(c)(iii) and which are paid in cash during such period.

"**Consolidated Interest Expense**" means, for any period, (i) total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) payable in cash of Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Company and its Subsidiaries, including all commissions,

discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements, but excluding, however, any amounts referred to in Section 2.10(d) payable on or before the Closing Date and amounts with respect to the termination of Interest Rate Agreements entered into within 90 days of the Closing Date, minus (ii) the aggregate amount of interest income of Company and its Subsidiaries during such period paid in cash.

"**Consolidated Net Income**" means, for any period, (i) the net income (or loss) of Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) (a) the income (or loss) of any Person (other than a Subsidiary of Company) in which any other Person (other than Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Company or any of its Subsidiaries by such Person during such period, (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Company or is merged into or consolidated with Company or any of its Subsidiaries or that Person's assets are acquired by Company or any of its Subsidiaries, (c) the income of any Subsidiary of Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (e) (to the extent not included in clauses (a) through (d) above) any net extraordinary gains or net extraordinary losses. Consolidated Net Income shall not be increased as a result of any discount realized as a result of any Permitted Loan Purchase.

"Consolidated Secured Debt" means, as at any date of determination, the Consolidated Total Debtof Company and its Subsidiaries determined on a consolidated basis (and without duplication) in accordance with GAAP that is secured by Liens on any of the assets of the Company or any of its Subsidiaries.

"**Consolidated Total Debt**" means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Company and its Subsidiaries determined on a consolidated basis in accordance with GAAP; provided, that the amount of revolving Indebtedness to be included at the date of determination shall be equal to the average of the balances of such revolving Indebtedness as of the end of each of the prior four calendar quarters (except that with respect to the first four calendar quarters after the Closing Date, the amount of revolving Indebtedness to be included shall be based on the average of the quarter end balances from the Closing Date through the date of determination).

"Consolidated Working Capital" means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities.

"Consolidated Working Capital Adjustment" means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period.

"**Contractual Obligation**" means, as applied to any Person, any provision of any indenture, mortgage, deed of trust, or other contract, undertaking, agreement or other instrument to which that Person is a party or to which such Person or any of its properties is subject.

"**Contributing Guarantors**" has the meaning assigned to that term in Section 7.2.

"**Conversion/Continuation Date**" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"**Conversion/Continuation Notice**" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"**Counterpart Agreement**" means a Counterpart Agreement substantially in the form of Exhibit H delivered by a Credit Party pursuant to Section 5.10.

"**Credit Date**" means the date of a Credit Extension.

"**Credit Document**" means any of this Agreement, the Notes, if any, the Collateral Documents, and all other documents, instruments or agreements executed and delivered by a Credit Party for the benefit of any Agent or any Lender in connection herewith.

"**Credit Extension**" means the making of a Loan.

"**Credit Party**" means each Person (other than any Agent or any Lender or any other representative thereof) from time to time party to a Credit Document.

"**Cumulative Interest Expense**" means the aggregate amount (without duplication and determined in each case in accordance with GAAP) of (A) interest expensed or capitalized, paid, accrued, or scheduled to be paid or accrued (including, in accordance with the following sentence, interest attributable to Capital Leases and

Attributable Indebtedness) of the Company and its Subsidiaries during such period, including (I) amortization of debt issuance costs, original issue discount, debt discounts or premium and other financing fees and expenses and non-cash interest payments or accruals on any Indebtedness, (II) the interest portion of all deferred payment obligations of the Company and its Subsidiaries, and (III) all commissions, discounts and other fees and charges owed by the Company and its Subsidiaries with respect to bankers' acceptances and letters of credit financings and Hedge Agreements, in each case to the extent attributable to such period, and (B) the amount of all cash dividends paid by the Company or any of its Subsidiaries in respect of preferred stock (other than by Subsidiaries of the Company to the Company or its wholly owned Subsidiaries).

"**Currency Agreement**" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Holdings' and its Subsidiaries' operations and not for speculative purposes.

"**DD Finance**" has the meaning assigned to that term in the preamble.

"**Declining Lender**" has the meaning assigned to that term in Section 2.14(d).

"**Default**" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"**Deposit Account**" means each checking or other demand deposit account maintained by any of the Credit Parties other than any Excluded Deposit Accounts. All funds in each Deposit Account shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agents and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any Deposit Account.

"**Disqualified Capital Stock**" means with respect to any Person, (a) Capital Stock of such Person that, by its terms or by the terms of any security into which it is convertible, exercisable or exchangeable, is, or upon the happening of an event or the passage of time or both would be, required to be redeemed or repurchased including at the option of the holder thereof by such Person or any of its Subsidiaries, in whole or in part, on or prior to 91 days following the Additional Term Loan Maturity Date and (b) any Capital Stock of any Subsidiary of such Person other than any common equity with no preferences, privileges, and no redemption or repayment provisions. Notwithstanding the foregoing, any Capital Stock of the Company that would constitute Disqualified Capital Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Capital Stock if the terms of such Capital Stock provide that the Company may not repurchase or redeem any such Capital Stock pursuant to such provisions prior to the prepayment of the Loans as are required by this Agreement.

"**Documentation Agent**" has the meaning assigned to that term in the preamble hereto.

"**Dollars**" and the sign "**$**" mean the lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**Eligible Assignee**" means (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and Sponsor and any fund or account affiliated with Sponsor (provided that, none of the Ares Limited Partnership, the Limited Partnerships, and to the extent holding any Capital Stock in Holdings, any other Ares Group Investor or Aurora Group Investor, shall be deemed to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents) and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses; provided, no Affiliate of Holdings (other than any existing Lender, Affiliate of such Lender, Sponsor or any fund or account affiliated with Sponsor) shall be an Eligible Assignee. Notwithstanding anything to the contrary in the foregoing, the Borrower shall be an Eligible Assignee when Loans are assigned pursuant to a Permitted Loan Purchase.

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claim**" means any investigation, written notice, written notice of violation, written claim, action, suit, proceeding, demand, abatement order or other written order or written directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, land use or the protection of the environment, in any manner applicable to Holdings or any of its Subsidiaries or any Facility.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"**ERISA Affiliate**" means, as applied to any Person on or after the date of the closing of the transactions contemplated by the Purchase Agreement, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member.

"**ERISA Event**" means (i) a "reportable event" within the meaning of Section 4043(c) of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan; (vi) the imposition, or the

occurrence of any events or condition that could reasonably be expected to result in the imposition, of liability on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the occurrence of an act or omission which could give rise to the imposition on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan (which fines, penalties, taxes or related charges, for purposes of Section 4.18, shall be material); (viii) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan or the assets thereof, or against Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (ix) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (x) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

"**Eurodollar Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

"**Event of Default**" means each of the conditions or events set forth in Section 8.1.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"**Excluded Deposit Accounts**" means, collectively, (a) Deposit Accounts established solely for the purpose of funding payroll and trust accounts and funded solely with amounts necessary to cover then outstanding payroll liabilities and amounts required to be retained in such trust accounts, as well as minimum balance requirements; (b) Deposit Accounts with amounts on deposit that, when aggregated with the amounts on deposit in all other Deposit Accounts for which a Control Agreement has not been obtained (other than those specified in clause (a) and (c)), do not at any time exceed $4,000,000; (c) Deposit Accounts, with amounts on deposit which in the aggregate that do not at any time exceed $1,000,000, held at a financial institution that is not, for United Stated federal income tax purposes (i) an individual who is a citizen or resident of the United States or (ii) a corporation, partnership or other entity treated as a corporation or partnership created or organized in or under the laws of the United States, or any political subdivision thereof; (d) zero balance disbursement accounts; and (e) Deposit Accounts, with amounts on deposit which in the aggregate do not at any time exceed $500,000, the sole proceeds of which are funds received by a Loan Party from credit card sales; provided that, in each of the foregoing cases, if reasonably requested by the Collateral Agent or the Administrative Agent, the Borrower shall provide such Agent with periodic updates of the account numbers and names of all financial institutions where such Deposit Accounts are maintained.

"**Existing Credit Agreement**" means the Amended and Restated Credit and Guaranty Agreement dated as of December 16, 2004, by and among Holdings, the Borrower, certain subsidiaries of the Borrower as guarantors and Credit Suisse as administrative agent, as previously amended, restated, amended and restated, supplemental or modified prior to the Closing Date.

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Holdings or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**Fair Share**" has the meaning assigned to that term in Section 7.2.

"**Fair Share Contribution Amount**" has the meaning assigned to that term in Section 7.2.

"**Federal Funds Effective 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, (i) 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 (ii) 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 charged to Administrative Agent, in its capacity as a Lender, on such day on such transactions as determined by Administrative Agent.

"**Financial Plan**" has the meaning assigned to that term in Section 5.1(i).

"**First Amendment**" means Amendment No. 1 to this Agreement dated as of December 19, 2008.

"**First Amendment to Revolving Credit Facility**" means Amendment No. 1 to Revolving Credit Facility, dated as of April 16, 2010 amongHoldings, the Company, Fisher, DD Finance and the lenders party thereto.

"**First Offer**" has the meaning assigned to that term in Section 2.14(d).

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Holdings and its Subsidiaries ending on December 31 of each calendar year.

"**Fisher**" has the meaning assigned to that term in the preamble.

"**Fixed Charge Coverage Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit M.

"**Fixed Charge Coverage Ratio**" means the ratio of (a) the aggregate amount of Consolidated Adjusted EBITDA for the Test Period to (b) the aggregate Consolidated Fixed Charges during the Test Period.

"**Flood Hazard Property**" means any Real Estate Asset subject to a mortgage in favor of Collateral Agent, for the benefit of the Lenders, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Funding Guarantors**" has the meaning assigned to that term in Section 7.2.

"**Funding Notice**" means a notice substantially in the form of Exhibit A-1.

"**GAAP**" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Grantor**" has the meaning assigned to that term in the Pledge and Security Agreement.

"**Guaranteed Obligations**" has the meaning assigned to that term in Section 7.1.

"**Guarantor**" means each of (i) Holdings, and (ii) each Guarantor Subsidiary from time to time party to this Agreement.

"**Guarantor Subsidiary**" means (i) Fisher, (ii) DD Finance, (iii) each Domestic Subsidiary of Holdings (other than Borrower), and (iv) to the extent no adverse tax consequences to Company would result therefrom, each Foreign Subsidiary of Holdings.

"**Guaranty**" means the guaranty of each Guarantor set forth in Section 7.

"**Hazardous Materials**" means any chemical, material, waste or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority.

"**Hazardous Materials Activity**" means any past, current or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, presence, Release, threatened Release, discharge, placement, generation, transportation, processing, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"**Hedge Agreement**" means an Interest Rate Agreement or a Currency Agreement entered into with a Lender Counterparty.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"**Holdings**" has the meaning assigned to that term in the preamble hereto.

"**Holdings Equity Proceeds**" means the proceeds of any sale of Capital Stock (other than Disqualified Capital Stock) of Holdings following the Second Amendment Effective Date (and excluding any proceeds of the Qualifying IPO), in each case, only to the extent that (i) such proceeds are held by Holdings in the form of cash or Cash Equivalents, (ii) such proceeds are not contributed by Holdings to the Company or any Subsidiary and (iii) the Restricted Payment Amount is not increased in respect of such proceeds.

"**Increased-Cost Lenders**" has the meaning assigned to that term in Section 2.22.

"**Indebtedness**" as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money (excluding accounts payable which are classified as current liabilities in accordance with GAAP and accrued expenses in each case incurred in the ordinary course of business); (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA or with respect to earn-outs incurred and paid when due in connection with Permitted Acquisitions), which purchase price is due more than six months from the date of incurrence of the obligation in respect thereof; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss

in respect thereof; (ix) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefore, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; (x) all net payment obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including, without limitation, any Interest Rate Agreement and Currency Agreement, whether entered into for hedging or speculative purposes; (xi) the principal balance outstanding under any synthetic lease, tax retention lease, off-balance sheet loan or similar off-balance sheet financing product; and (xii) the indebtedness of any partnership or Joint Venture in which such Person is a general partner or a joint venturer except to the extent that the terms of such indebtedness provide that such indebtedness is nonrecourse to such Person.

"**Indemnified Liabilities**" has the meaning assigned to that term in Section 10.3(a).

"**Indemnitee**" has the meaning assigned to that term in Section 10.3(a).

"**Installment**" has the meaning assigned to that term in Section 2.11.

"**Intellectual Property**" means all patents, trademarks, service marks, tradenames, domain names, trade secrets, copyrights, technology, know-how and processes used in or necessary for the conduct of the business of Company and its Subsidiaries.

"Intercreditor Agreement" shall mean the Intercreditor Agreement in the form of Exhibit L.

"**Interest Payment Date**" means with respect to (i) any Base Rate Loan, the last Business Day in each of March, June, September and December of each year through the final maturity date of such Loan; and (ii) any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three months "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"**Interest Period**" means, in connection with a Eurodollar Rate Loan, an interest period of one-, two-, three- or six-months, as selected by Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c), of this definition, end on the last Business Day of a

calendar month; (c) no Interest Period with respect to any portion of any Term Loan (other than any Additional Term Loan) shall extend beyond the Maturity Date and (d) no Interest Period with respect to any portion of any Additional Term Loan shall extend beyond the Additional Term Loan Maturity Date.

"**Interest Rate Agreement**" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with Holdings' and its Subsidiaries' operations and not for speculative purposes.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"**Investment**" means (i) any direct or indirect purchase or other acquisition by Holdings or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (including any Subsidiary of Holdings); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Holdings from any Person other than Company or any Guarantor Subsidiary, of any Capital Stock of such Subsidiary; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by Holdings or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto minus the amount of any return of capital with respect to such Investment, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"**Investment Conditions**" means (i) the Consolidated Coverage Ratio is not less than 2.0 to 1.0 and (ii) the Leverage Ratio is not greater than 5.0 to 1.0.

"**Joint Venture**" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"**Lender**" has the meaning assigned to that term in the preamble hereto, and shall include any other Person that becomes a party hereto pursuant to an Assignment Agreement or the Term Loan Joinder Agreement.

"**Lender Counterparty**" means each Lender or any Affiliate of a Lender counterparty to a Hedge Agreement (including any Person who is a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into a Hedge Agreement, ceases to be a Lender).

"**Leverage Ratio**" means the ratio as of the date of determination of (i) Consolidated Total Debt, less unrestricted Cash and Cash Equivalents of Company and its Subsidiaries as of such day in excess of $1,000,000, the contents of which are in a Blocked Account, to (ii) Consolidated Adjusted EBITDA for the Test Period most recently ended.

"**Lien**" means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

"**Loan**" means a Term Loan.

"Loan Purchase Limit" means (a) prior to the date that the Borrower delivers to Administrative Agent a written certification of its Net Cash Balance as of December 31, 2008 in form reasonably satisfactory to Administrative Agent, $45,200,000, and (b) after such date, the sum of the Net Cash Balance as of December 31, 2008 plus the aggregate principal balance of all Loans purchased prior to such date pursuant to Permitted Loan Purchases plus 50% of accrued Consolidated Excess Cash Flow for Fiscal Year 2009.

"**Management Services Agreement**" means the Amended and Restated Management Services Agreement dated April 12, 2004 between Holdings and Sponsor, as it may be amended, supplemented or otherwise modified from time to time.

"**Margin Stock**" has the meaning assigned to that term in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"**Material Adverse Effect**" means a material adverse effect upon (i) the business, operations, properties, assets or condition (financial or otherwise) of Holdings and its Subsidiaries taken as a whole; (ii) the ability of any Credit Party to perform its Obligations; (iii) the legality, validity, binding effect or enforceability against a Credit Party of a Credit Document to which it is a party; or (iv) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

"**Maturity Date**" means May 21, 2013.

"**Maximum Restricted Payment Amount**" means, for any four Fiscal Quarter period, (1) $24,000,000, if Consolidated Adjusted EBITDA is greater than or equal to $30,000,000 and less than or equal to $40,000,000 for the Test Period, (2) $12,000,000, if Consolidated Adjusted EBITDA is greater than or equal to $27,000,000 but less than $30,000,000 for the Test Period, (3) $8,000,000, if Consolidated Adjusted EBITDA is greater than or equal to $25,000,000 but less than $27,000,000 for the Test Period, and (4) $0, if Consolidated Adjusted EBITDA is less than $25,000,000 for the Test Period.

"**Moody's**" means Moody's Investor Services, Inc.

"**Mortgage**" means a Mortgage substantially in the form of Exhibit J, as it may be amended, supplemented or otherwise modified from time to time.

"**Multiemployer Plan**" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) or Section 4001(a)(3) of ERISA.

"**Net Asset Sale Proceeds**" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by Holdings or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including, without limitation, (a) income taxes estimated in good faith by the seller thereof to be payable by the seller as a result of any gain recognized in connection with such Asset Sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, (c) brokerage fees and legal expenses incurred directly attributable to such Asset Sale; and (d) any reserves required to be established by the seller thereof in accordance with GAAP against liabilities reasonably anticipated and directly attributable to the Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under indemnification obligations associated with such Asset Sale.

"Net Cash Balance" means, at any time, the (a) sum of all Cash and Cash Equivalents held by Credit Parties minus (b) the sum of the aggregate principal amount of loans outstanding under the Revolving Credit Facility plus the aggregate maximum amount which may be drawn under all letters of credit issued under the Revolving Credit Facility.

"**Net Insurance/Condemnation Proceeds**" means an amount equal to: (i) any Cash payments or proceeds received by Holdings or any of its Subsidiaries (a) under any casualty insurance policy in respect of a covered loss thereunder or (b) as a result of the taking of any assets of Holdings or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Holdings or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Holdings or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including income taxes estimated in good faith by the seller thereof to be payable as a result of any gain recognized in connection therewith.

"**Non-US Lender**" has the meaning assigned to that term in Section 2.19(c).

"**Note**" means a Term Loan Note.

"**Notice**" means a Funding Notice or a Conversion/Continuation Notice.

"**Obligations**" means all obligations of every nature of each Credit Party from time to time owed to the Agents (including former Agents), the Lenders or any of them, or to any Lender Counterparties, under any Credit Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit

Party for such interest in the related bankruptcy proceeding), payments for fees, expenses, indemnification or otherwise.

"**Obligee Guarantor**" has the meaning assigned to that term in Section 7.7.

"**Organizational Documents**" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any Employee Benefit Plan which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Perfection Deliverables**" means, with respect to any Credit Party, or any Person that becomes a Credit Party pursuant to Section 5.10 and to the extent required to be delivered under such Section:

(i) evidence satisfactory to Collateral Agent of the compliance by such Credit Party of its obligations under the Pledge and Security Agreement and the other Collateral Documents (including, without limitation, its obligations (A) to execute and deliver (x) UCC financing statements, (y) originals of securities, instruments and chattel paper and (z) any agreements governing deposit and/or securities accounts as provided therein, and (B) to file intellectual property security agreements with the United States Patent and Trademark Office and the United States Copyright Office);

(ii) (A) to the extent required to be delivered by the Collateral Agent, the results of searches, by Persons satisfactory to Collateral Agent, of all effective UCC financing statements (or equivalent filings), fixture filings and all judgment and tax lien filings which may have been made with respect to any personal or mixed property of such Credit Party, and of filings with the United States Patent and Trademark Office and the United States Copyright Office, together with copies of all such filings disclosed by such searches, and (B) UCC termination statements (or similar documents), releases to be filed with the United States Patent and Trademark Office and the

United States Copyright Office, and other filings duly executed by all applicable Persons for filing in all applicable jurisdictions and offices as may be necessary to terminate any effective UCC financing statements (or equivalent filings) and other filings disclosed in such searches (other than any such financing statements in respect of Permitted Liens);

(iii) to the extent required to be delivered by the Collateral Agent, opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in the Collateral of such Credit Party and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

(iv) evidence that such Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including without limitation, any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to Section 6.1(b)) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

"Periodic Dividend Amount" means (x) $16,000,000 minus (y) the sum of the aggregate amount of Restricted Payments made pursuant to Section 6.5(d)(i) during the Fiscal Quarter in which the subject Restricted Payment is to be paid and the three Fiscal Quarters most recently ended.

"**Permitted Acquisition**" means any acquisition by Company or any of its wholly-owned Guarantor Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided, that: (i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom; (ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations; (iii) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Subsidiary of Company in connection with such acquisition shall be owned not less than 80% by Company or a Guarantor Subsidiary thereof, and Company shall have taken, or caused to be taken, each of the actions (and within the time periods) set forth in Sections 5.10 and/or 5.11, as applicable; (iv) any Person or assets or division as acquired in accordance herewith shall be in same business or lines of business in which Company and/or its Subsidiaries are engaged as of the Closing Date or any business reasonably related thereto; and (v) each such Permitted Acquisition shall be

effectuated pursuant to the terms of a consensual merger or stock purchase agreement or other consensual acquisition agreement between the Company or the applicable Subsidiary and the applicable seller or Person being so acquired.

"**Permitted Liens**" means each of the Liens permitted pursuant to Section 6.2.

"Permitted Loan Purchase" means one or more purchases by the Borrower of Loans that are not yet due and owing to any Lender; provided that (i) each offer to purchase Loans shall be for a minimum principal amount of not less than $5,000,000 (although the Loans actually purchased pursuant to such offer may be less than $5,000,000 if less than that amount is submitted for sale by Lenders in response to such purchase offer), (ii) the aggregate principal amount of all such purchases shall not exceed the lesser of (x) $50,000,000 and (y) Loan Purchase Limit then in effect, (iii) all such purchases shall be consummated on or before December 31, 2009, (iv) such purchases shall be implemented pursuant to an offer in the form of Exhibit A attached to the First Amendment, which offer is made to all Lenders; provided that the initial Permitted Loan Purchase shall be implemented pursuant to an offer in the form of Exhibit B attached to the First Amendment, (v) the Borrower shall not borrow under the Revolving Credit Facility for the purpose of funding any such Permitted Loan Purchase and (vi) the Borrower and the assigning Lender(s) shall have executed and delivered to Administrative Agent an Assignment Agreement pursuant to Section 10.6(d). Notwithstanding anything to the contrary in the foregoing, clauses (i) and (iv) of the preceding sentence will not apply with respect to Permitted Loan Purchases of up to $5,000,000 in aggregate principal amount purchased, provided such purchases otherwise meet the foregoing definition of a "Permitted Loan Purchase".

"**Permitted Refinancing**" means, with respect to any Indebtedness, extensions, renewals, refinancings or replacements of such Indebtedness provided that such extensions, renewals, refinancings or replacements (i) are on terms and conditions (including the terms and conditions of any guarantees of or other credit support for such Indebtedness) not materially less favorable taken as a whole to Company and its Subsidiaries, the Agents or the Lenders than the terms and conditions of the Indebtedness being extended, renewed, refinanced or replaced, (ii) do not add as an obligor any Person that would not have been an obligor under the Indebtedness being extended, renewed replaced or refinanced, (iii) do not result in a greater principal amount or shorter remaining average life to maturity than the Indebtedness being extended, renewed replaced or refinanced and (iv) are not effected at any time when a Default or Event of Default has occurred and is continuing or would result therefrom.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Phase I Report**" means, with respect to any Facility, a report that (i) conforms to the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527, (ii) was conducted no more than six months prior to the date such report is required to be delivered hereunder, by one or more environmental consulting firms

reasonably satisfactory to Administrative Agent, (iii) includes an assessment of asbestos-containing materials at such Facility, (iv) is accompanied by (a) an estimate of the reasonable worst-case cost of investigating and remediating any Hazardous Materials Activity identified in the Phase I Report as giving rise to an actual or potential material violation of any Environmental Law or as presenting a material risk of giving rise to a material Environmental Claim, and (b) a current compliance audit setting forth an assessment of Holdings', its Subsidiaries' and such Facility's current and past compliance with Environmental Laws and an estimate of the cost of rectifying any non-compliance with current Environmental Laws identified therein and the cost of compliance with reasonably anticipated future Environmental Laws identified therein.

"**Pledge and Security Agreement**" means the Pledge and Security Agreement dated as of the Closing Date by Borrower and each Guarantor, substantially in the form of Exhibit I, as it may be amended, supplemented or otherwise modified from time to time.

"**Prepayment Amount**" has the meaning assigned to that term in Section 2.14(d).

"**Prime Rate**" means the rate of interest per annum announced from time to time by Credit Suisse as its prime commercial lending rate in effect at its principal office in New York City. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Credit Suisse or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Principal Office**" means, Administrative Agent's "Principal Office" as set forth on Appendix B, or such other office as Administrative Agent may from time to time designate in writing to Borrower and each Lender.

"**Projections**" has the meaning assigned to that term in Section 4.8.

"**Pro Rata Share**" means: with respect to all payments, computations and other matters relating to the Term Loans of any Lender, the percentage obtained by dividing (a) the Term Loan Exposure of that Lender by (b) the aggregate Term Loan Exposure of all Lenders. For all other purposes with respect to each Lender, "Pro Rata Share" means the percentage obtained by dividing (A) an amount equal to the sum of the Term Loan Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Term Loan Exposure of all Lenders.

"**Qualifying IPO**" means the consummation of the first underwritten public offering of the Capital Stock (other than Disqualified Capital Stock) of Holdings following the Closing Date pursuant to a registration statement filed with the Securities and Exchange Commission in accordance with the Securities Act.

"**Qualifying IPO Payment**" means, concurrent with the closing of a Qualifying IPO, the one-time payment to Sponsor in connection with the termination of the Management Services Agreement in an aggregate amount not to exceed $6,000,000.

"**Qualifying Preferred Stock Redemption**" means, concurrent with the closing of a Qualifying IPO, the payment of $1,000 to Aurora Equity Partners II L.P. and $1,000 to Ares Limited Partnership in respect of the redemption of the one share of Series B Preferred Stock and

Series C Preferred Stock held by Aurora Equity Partners II L.P. and the Ares Limited Partnership, respectively.

"**Qualifying Senior Notes Redemption**" means, concurrent with the closing of a Qualifying IPO, the Borrower and DD Finance (i) have given irrevocable and unconditional notice of redemption for all of the outstanding Senior Notes, (ii) have timely and irrevocably deposited or caused to be deposited with the trustee under the Senior Notes Indenture proceeds of a Qualifying IPO, proceeds of Additional Term Loans, Cash and/or proceeds of Revolving Loans (as defined in the Revolving Credit Facility) sufficient to pay and discharge the entire indebtedness (including all principal, premium, if any, and accrued interest) on all outstanding Senior Notes and (iii) have satisfied all other conditions precedent to the discharge of the Senior Notes Indenture set forth in Section 8.8 of the Senior Notes Indenture.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"**Real Estate Asset Deliverables**" means, with respect to any Real Estate Asset acquired by any Credit Party, or held by any Person that becomes a Credit Party, and to the extent required to be delivered pursuant to Section 5.11:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering such Real Estate Asset;

(ii) at the request of the Collateral Agent, an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in each state in which such Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent;

(iii) at the request of the Collateral Agent, (a) ALTA mortgagee title insurance policies or unconditional commitments therefore issued by one or more title companies reasonably satisfactory to Collateral Agent with respect to such Real Estate Asset, in amounts satisfactory to the Collateral Agent with respect to such Real Estate Asset, together with a title report issued by a title company with respect thereto (each, a "**Title Policy**") and dated as of a recent date prior to the date which such Real Estate Asset is acquired or such Person becomes a Credit Party, as the case may be, and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent and (b) evidence satisfactory to Collateral Agent that such Credit Party has paid to

the title company or to the appropriate governmental authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for such Real Estate Asset in the appropriate real estate records;

(iv) evidence of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, in form and substance reasonably satisfactory to Collateral Agent; and

(v) at the request of the Collateral Agent, ALTA surveys of such Real Estate Asset, certified to Collateral Agent and dated as of a recent date which such Real Estate Asset is acquired or such Person becomes a Credit Party, as the case may be.

"**Register**" has the meaning assigned to that term in Section 2.6(b).

"**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"**Related Fund**" means, with respect to any Lender that is an investment fund, any other investment fund or similar investment vehicle that invests in commercial loans and that is managed or advised by (i) the Lender, (ii) an Affiliate of Lender or (iii) the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Related Lender Assignment**" has the meaning assigned to that term in Section 10.6(c).

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

"**Replacement Lender**" has the meaning assigned to that term in Section 2.22.

"**Requisite Lenders**" means one or more Lenders having or holding Term Loan Exposure and representing more than 50% of the sum of the aggregate Term Loan Exposure of all Lenders.

"**Restricted Payment**" means (i) any dividend or other distribution (including, for the avoidance of doubt, any payment pursuant to Section 6.5(d)), direct or indirect, on account of any shares of any class of stock (or of any other Capital Stock) of Holdings or Company now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock (or of any other Capital Stock) of Holdings or Company now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock (or of any other Capital Stock) of Holdings or Company now or hereafter outstanding; (iv) management or similar fees payable to Sponsor or any of its Affiliates; and (v) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Indebtedness permitted pursuant to Sections 6.1(b), 6.1(e) (in respect of Indebtedness incurred under Sections 6.1(b), 6.1(k) (to the extent constituting subordinated Indebtedness) or 6.1(m)), 6.1(k) (to the extent constituting subordinated Indebtedness) or 6.1(m). Notwithstanding anything to the contrary contained herein, (i) the redemption of the Senior Notes pursuant to the Qualifying Senior Notes Redemption shall not be treated as a Restricted Payment for any purpose hereunder, (ii) the Qualifying IPO Payment shall not be treated as a Restricted Payment for any purpose hereunder, and (iii) the redemption by Holdings of any preferred stock of Holdings pursuant to a Qualifying Preferred Stock Redemption shall not be treated as a Restricted Payment for any purpose hereunder.

"**Restricted Payment Amount**" means, as of any date of determination, an amount set forth on the Restricted Payment Certificate delivered to the Administrative Agent no later than 10:00 a.m. (New York City time) at least three (3) Business Days in advance of the payment date of the transaction giving rise to a determination of the Restricted Payment Amount (which can be less than zero), equal to (a) the difference (but not less than zero) between (i) Restricted Payment EBITDA and (ii) the product of 2.0 multiplied by Cumulative Interest Expense (determined, in each case, for the period commencing on the first day of the first full Fiscal Quarter after the Closing Date through and including the last full Fiscal Quarter (taken as one accounting period) preceding such date of determination), plus (b) 100% of the aggregate net cash proceeds received by the Company from a capital contribution or sale of Capital Stock to Holdings after the Closing Date, plus (c) except in each case, in order to avoid duplication, to the extent any such payment or proceeds have been included in the calculation of Restricted Payment EBITDA, an amount equal to the net amounts received in respect of Investments made under Section 6.7(l) or 6.7(m) in any Person resulting from cash distributions on or cash repayments of any Investments, including payments of interest on Indebtedness, dividends, repayments of loans or advances, or other distributions or other transfers of assets, in each case to Company, DD Finance, Fisher or any of their respective Subsidiaries or from the net cash proceeds from the sale of any such Investment, not to exceed, in each case, the amount of Investments previously made by Company, DD Finance, Fisher or any of their respective Subsidiaries in such Person, less the cost of disposition (and excluding Investments in Subsidiaries), minus (d) the sum of (i) the aggregate amount of Restricted Payments made pursuant to Sections 6.5(a)(ii) (other than to the Company or a wholly-owned Subsidiary Guarantor) and 6.5(c)(iv); and (ii) (without duplication) amounts applied or utilized pursuant to Section 6.5(d)(i), Section 6.5(f), Section 6.7(l) or Section 6.7(m) or Section 6.16(d). For

purposes of this definition, (i) the amount of any payment or Investment made or returned hereunder, if other than in cash, shall be the fair market value thereof, as determined in the good faith reasonable judgment of the board of directors of the Company (or similar governing body) for such payments or Investments with a value in excess of $1.0 million, and otherwise by an executive officer of the Company at the time made or returned, as applicable, (ii) interest with respect to Capital Leases shall be deemed to accrue at an interest rate reasonably determined in good faith by the Company to be the rate of interest implicit in such Capital Lease in accordance with GAAP and (iii) interest expense attributable to any Indebtedness represented by the guarantee by the Company or any of its Subsidiaries of an obligation of another Person shall be deemed to be the interest expense attributable to the Indebtedness guaranteed. Notwithstanding anything to the contrary contained herein, (i) the redemption of the Senior Notes pursuant to the Qualifying Senior Notes Redemption shall not reduce the Restricted Payment Amount for any purpose hereunder, (ii) the Qualifying IPO Payment shall not reduce the Restricted Payment Amount for any purpose hereunder, (iii) the proceeds of a Qualifying IPO shall not increase the Restricted Payment Amount for any purpose hereunder, and (iv) the redemption of preferred stock of Holdings pursuant to the Qualifying Preferred Stock Redemption shall not reduce the Restricted Payment Amount for any purpose hereunder.

"**Restricted Payment Certificate**" means a Restricted Payment Certificate substantially in the form of Exhibit K.

"**Restricted Payment EBITDA**" means, for any period and without duplication, (a) Consolidated Adjusted EBITDA for such period,plus (b) the sum of each of the following to the extent deducted in the calculation of Consolidated Net Income for such period, (i) all losses which are non-recurring, (ii) interest attributable to Attributable Indebtedness, and (iii) the amount of all dividends accrued or payable (whether or not in cash) by the Company or any of its Subsidiaries in respect of preferred stock (other than (A) dividends on Capital Stock (other than Disqualified Capital Stock) of the Company or such Subsidiary payable solely in Capital Stock (other than Disqualified Capital Stock) of the Company or such Subsidiary, as applicable, and (B) dividends by Subsidiaries of the Company to the Company or its wholly-owned Subsidiaries), plus (c) the aggregate amount of interest income of the Company and its Subsidiaries during such period paid in cash to the extent reducing Consolidated Adjusted EBITDA minus (d) all gains which are non-recurring (including any gain from the issuance or sale of any Capital Stock) to the extent included in the calculation of Consolidated Net Income for such period.

"**Revolving Credit Document**" all documents, instruments or agreements executed and delivered by Holdings or any of its subsidiaries for the benefit of any agent or lender in connection with the Revolving Credit Facility.

"**Revolving Credit Facility**" means the $60.0 million senior secured revolving credit facility pursuant to the revolving credit agreement dated as of the Closing Date among Holdings, the Company, Fisher, DD Finance, the lenders party thereto, Credit Suisse as administrative agent and JPMorgan Chase Bank, N.A., as collateral agent, as it may be amended, modified, refinanced or replaced from time to time, including amendments increasing the principal amount of revolving loans available thereunder.

"**RP Conditions"** means (i) the sum of (x) the aggregate amount of Cash of the Borrower in Deposit Accounts subject to a Blocked Account Agreement and (y) Excess Availability (as defined in the Revolving Credit Facility) is at least $12,000,000; provided, that Excess Availability will be calculated without giving effect to any Cash, and (ii) the Leverage Ratio is less than 6.0 to 1.0.

"**S&P**" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

"**Second Amendment**" means Amendment No. 2 to Credit and Guaranty Agreement, dated as of April 16, 2010, among the Company and the Lenders party thereto.

"**Second Amendment Effective Date**" means the date on which the Second Amendment became effective in accordance with its terms.

"**Second Offer**" has the meaning assigned to that term in Section 2.14(d).

"**Second Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

"Secured Debt Ratio" means the ratio as of the date of determination of (i) Consolidated Secured Debt, less unrestricted Cash and Cash Equivalents of the Company and its Subsidiaries in excess of $1,000,000, the contents of which are in a Blocked Account, as of such date, to (ii) Consolidated Adjusted EBITDA for the Test Period most recently ended.

"**Secured Parties**" has the meaning assigned to that term in the Pledge and Security Agreement.

"Section 6.5(d) Certificate" means a certificate of an Authorized Officer (i) certifying that the conditions to the making of a Restricted Payment set forth in Section 6.5(d)(i) have been satisfied and (ii) designating the portion of such Restricted Payment made in reliance upon (x) the Periodic Dividend Amount and (y) the Restricted Payment Amount. Any such designation made pursuant to clause (ii) of the preceding sentence shall be permanent.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"**Senior Notes**" means the Senior Notes issued pursuant to the Senior Notes Indenture.

"**Senior Notes Indenture**" means that certain Indenture dated as of December 16, 2004, by and among the Company, DD Finance and U.S. Bank National Association, as Indenture Trustee, governing the Company's 7 ¾% Senior Notes due 2012.

"**Solvency Certificate**" means a Solvency Certificate of the chief financial officer of Holdings and Borrower substantially in the form of Exhibit G.

"**Solvent**" means, with respect to any Person, that as of the date of determination both (A) (i) the then fair saleable value of the property of such Person is (y) greater than the total amount of liabilities (including contingent liabilities) of such Person and (z) not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person; (ii) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (iii) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (B) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**Sponsor**" means, collectively, the Aurora Group Investors, the Ares Group Investors and the Affiliates (without giving effect to clause (i) of the last sentence of the definition of such term) of Aurora Management Partners LLC or Ares Management LLC.

"**Subject Transaction**" has the meaning assigned to that term in Section 6.8(c)(i).

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Tax**" means, with respect to any Person, any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided, however, solely for purposes of Sections 2.18 and 2.19, the foregoing shall not include (a) taxes imposed on or measured by such Person's overall net income (however denominated), and franchise taxes imposed on such Person (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such Person is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office

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is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Company is located and (c) in the case of a Non-US Lender, any withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new lending office) or is attributable to such Lender's failure (other than as a result of a Change in Law) to comply with Section 2.19(c), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Company with respect to such withholding tax pursuant to Section 2.19(a) or Section 2.19(b).

"**Term Loan**" means, collectively, the Term Loans outstanding on the Second Amendment Effective Date (other than Additional Term Loans made pursuant to the Second Amendment) and the Additional Term Loans.

"**Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund any Term Loan and "**Term Loan Commitments**" means such commitments of all Lenders in the aggregate.

"**Term Loan Exposure**" means, with respect to any Lender as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; provided, at any time prior to the making of the Additional Term Loans, the Term Loan Exposure of any Lender shall be equal to the principal amount of the Term Loans of such Lender outstanding on the Second Amendment Effective Date (other than Additional Term Loans) plus such Additional Lender's Term Loan Commitment.

"**Term Loan Joinder Agreement**" means the Term Loan Joinder Agreement, dated as of the Second Amendment Effective Date, among the Company, the Administrative Agent and the Lenders party thereto.

"**Term Loan Note**" means a promissory note in the form of Exhibit B, as it may be amended, supplemented or otherwise modified from time to time.

"**Term Priority Collateral**" has the meaning assigned to that term in the Intercreditor Agreement.

"**Terminated Lender**" has the meaning assigned to that term in Section 2.22.

"**Test Period**" means, at any time, the four Fiscal Quarters last ended (in each case taken as one accounting period) for which financial statements are

required to have been delivered, pursuant to Section 5.1(b).

"**Title Policy**" has the meaning assigned to that term in the definition of "Real Estate Asset Deliverables."

"**Type of Loan**" means a Base Rate Loan or a Eurodollar Rate Loan.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Holdings to Lenders pursuant to Section 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the most recent financial statements referred to in Section 4.7; provided that, solely for purposes of calculating the Restricted Payment Amount, the terms used in, or otherwise relating to, the definition of "Restricted Payment Amount" shall, except as otherwise expressly provided herein, have the meanings assigned to them in conformity with GAAP as in effect from time to time.

Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

SECTION 2. LOANS

Term Loans.

(a) Loan Commitments. Subject to the terms and conditions hereof, (i) each Lender existing on the Closing Date made a Term Loan to the Company on the Closing Date, and (ii) each Additional Term Loan Lender has, pursuant to the Term Loan Joinder Agreement, severally agreed to make, on the Second Amendment Effective Date, an Additional Term Loan to the Company in an amount equal to such Lender's Additional Term Loan Commitment as set forth in the Term Loan Joinder Agreement. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.11, 2.12 and 2.13, (i) all amounts owed hereunder with respect to the Term Loans (other than the Additional Term Loans) shall be paid in full no later than the Maturity Date and (ii) all amounts owed hereunder with respect to the Additional Term Loans shall be paid in full no later than the Additional Term Loan Maturity Date. Each Lender's Additional Term Loan Commitment shall terminate immediately and without further action on the Second Amendment Effective Date after giving effect to the funding of such Lender's Additional Term Loan Commitment pursuant to the Term Loan Joinder Agreement on such date.

(b) Borrowing Mechanics for Term Loans.

(i) In the case of Term Loans (other than Additional Term Loans), Company shall deliver to Administrative Agent a fully executed and delivered Funding Notice no later than 10:00 a.m. (New York City time) at least (x) three (3) Business Days in advance of the Closing Date in the case of a Eurodollar Rate Loan to be made on the Closing Date or (y) one (1) Business Day in advance of the Closing Date in the case of a Base Rate Loan to be made on the Closing Date. Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing. In the case of Additional Term Loans, the borrowing procedures are set forth in the Term Loan Joinder Agreement.

(c) In the case of Term Loans (other than Additional Term Loans) each Lender shall make its Term Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the Closing Date by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loans (other than Additional Term Loans) available to Company on the Closing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Company at Administrative Agent's Principal Office or to such other account as may be designated in such Funding Notice.

[RESERVED]

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Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each

day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent together with

interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate applicable to such Loan. Nothing in this Section 2.4(b) shall be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

Use of Proceeds. The proceeds of Term Loans drawn on the Closing Date shall be used to repay outstanding obligations under the Existing Credit Agreement and pay transaction expenses. The proceeds of Additional Term Loans shall be used to repay outstanding Senior Notes. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Borrower's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and Loans of each Lender from time to time (the "**Register**"). In the case of a Related Lender Assignment described in Section 10.6(e) that is not reflected in the Register, the assigning Lender shall maintain a comparable register, which shall be made available for inspection by Administrative Agent at any reasonable time and from time to time upon reasonable prior notice to such Lender. The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register the Loans, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of any Loan. Borrower hereby designates Credit Suisse to serve as Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.6, and Borrower hereby agrees that, to

the extent Credit Suisse serves in such capacity, Credit Suisse and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Borrower at least two (2) Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6, other than an assignee party to a Related Lender Assignment described in Section 10.6(e)) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Term Loan.

Interest on Loans.

(a) Except as otherwise set forth herein, each Term Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or

(ii) if a Eurodollar Rate Loan, at the Adjusted Eurodollar Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by Borrower and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

(c) In connection with Eurodollar Rate Loans there shall be no more than ten (10) Interest Periods outstanding at any time. In the event Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall,

absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower and each Lender.

(d) Interest payable pursuant to Section 2.7(a) shall be computed (i) in the case of Base Rate Loans at times when the Base Rate is based on the Prime Rate on the basis of a 365-day or 366-day year, as the case may be, and (ii) in the case of Eurodollar Rate Loans, and Base Rate Loans at times when the Base Rate is based on the Federal Funds Effective Rate, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan shall be payable in arrears on and to (i) each Interest Payment Date applicable to such Loan; (ii) upon any prepayment of such Loan that is a Eurodollar Rate Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

(f) To the extent any other Credit Document references "Loans", "Term Loans" or loans made under this Agreement for purposes of determining the applicable interest rate (excluding any reference in connection with the payment of interest on the principal amount of the Loans) and without specifying whether such reference is intended to mean "Term Loans" or "Additional Term Loans", each such reference shall be interpreted to mean "Additional Term Loans".

Conversion/Continuation.

(a) Subject to Section 2.17 and so long as no Default or Event of Default shall have occurred and then be continuing, Borrower shall have the option:

(i) to convert at any time all or any part of any Term Loan equal to $2,000,000 and integral multiples of $500,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a Eurodollar Rate Loan may only be converted on the expiration of

the Interest Period applicable to such Eurodollar Rate Loan unless Borrower shall pay all amounts due under Section 2.17 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Loan equal to $2,000,000 and integral multiples of $500,000 in excess of that amount as a Eurodollar Rate Loan.

(b) Borrower shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three (3) Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans (or telephonic notice in lieu thereof) shall be irrevocable, and Borrower shall be bound to effect a conversion or continuation in accordance therewith.

Default Interest. Upon the occurrence and during the continuance of an Event of Default under Sections 8.1(a), 8.1(f) or 8.1(g), the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans not paid when due and any fees and other amounts then due and payable hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans constituting Term Loans (other than Additional Term Loans) or Additional Term Loans, as applicable); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans constituting Term Loans (other than Additional Term Loans) or Additional Term Loans, as applicable. Payment or acceptance of the increased rates of interest provided for in this Section 2.9 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent, Collateral Agent or any Lender.

Fees. Company agrees to pay to Arranger and Agents such other fees and other payments in the amounts and at the times separately agreed upon.

Scheduled Term Loan Payments. The principal amounts of the Term Loans shall be repaid in consecutive quarterly installments in amounts equal to 0.25% of the Term

Loans funded on the Closing Date or the Second Amendment Effective Date, as applicable, on the last day of each Fiscal Quarter, with the balance of the Term Loans (other than the Additional Term Loans) payable on the Maturity Date and the balance of the Additional Term Loans payable on the Additional Term Loan Maturity Date (each of such consecutive quarterly installments and the payment of the balances on the Maturity Date and the Additional Term Loan Maturity Date, an "**Installment**").

Notwithstanding the foregoing, (x) such Installments shall be reduced pro rata in connection with any voluntary or mandatory prepayments of the Term Loans in accordance with Sections 2.12, 2.13 and 2.14, as applicable; (y) the Term Loans (other than the Additional Term Loans), together with all other amounts owed hereunder with respect thereto, shall, in any event be paid in full no later than the Maturity Date and (z) the Additional Term Loans, together with all other amounts owed hereunder with respect thereto, shall, in any event be paid in full no later than the Additional Term Loan Maturity Date.

Voluntary Prepayments.

(a) Voluntary Prepayments.

(i) Any time and from time to time:

(1) with respect to Base Rate Loans, Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of $2,000,000 and integral multiples of $500,000 in excess of that amount; and

(2) with respect to Eurodollar Rate Loans, Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $2,000,000 and integral multiples of $500,000 in excess of that amount;

(ii) All such prepayments shall be made:

(1) upon not less than one (1) Business Day's prior written or telephonic notice in the case of Base Rate Loans; and

(2) upon not less than three (3) Business Days' prior written or telephonic notice in the case of Eurodollar Rate Loans;

in each case given to Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and

Administrative Agent will promptly notify each Lender). Upon the giving of any such notice (which notice shall be irrevocable), the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.14(a).

Mandatory Prepayments.

(a) Asset Sales. No later than the first Business Day following the date of receipt by Holdings or any of its Subsidiaries of any Net Asset Sale Proceeds, Company shall offer to prepay the Loans as set forth in Sections 2.14(b) and 2.14(d) in an aggregate amount equal to such Net Asset Sale Proceeds; provided, so long as no Default or Event of Default shall have occurred and be continuing on or as of such first Business Day, Company shall have the option (exercisable upon written

notice thereof to Administrative Agent on or prior to such first Business Day), directly or through one or more of its Subsidiaries, to invest Net Asset Sale Proceeds within three hundred and sixty five (365) days of receipt thereof in long-term productive assets of the general type used in the business of Company and its Subsidiaries or to make capital expenditures in connection with improvement of capital assets of Company or any of its Subsidiaries (it being expressly agreed that any Net Asset Sale Proceeds not so invested shall be immediately offered to be applied as set forth in Sections 2.14(b) and 2.14(d)); provided, further, pending any such investment at any time that Net Asset Sale Proceeds not so invested shall equal or exceed $5,000,000 in the aggregate, an amount equal to all such Net Asset Sale Proceeds shall be deposited by Company, unless waived by Administrative Agent in its sole discretion, in a deposit account maintained at Administrative Agent as part of the Collateral (it being understood that, (x) so long as no Default or Event of Default shall have occurred and be continuing, Administrative Agent shall release or consent to the release of such funds to Company upon delivery to Administrative Agent of a certificate of an officer of Company certifying that such funds shall, upon release of such funds, be applied in accordance this Section 2.13(a) and (y) to the extent such amounts are not applied in accordance with, and at the times required by, this Section 2.13(a), all such funds then held by Administrative Agent shall be immediately applied by Administrative Agent, or immediately paid over to Administrative Agent to be applied, as set forth in Section 2.14(b)); provided, further, that notwithstanding the foregoing, the Net Asset Sale Proceeds from any sale leaseback transaction permitted pursuant to Section 6.1(n) hereof shall be offered to be applied as set forth in Sections 2.15(b) and 2.14(d).

(b) Insurance/Condemnation Proceeds. No later than the first Business Day following the date of receipt by Holdings or any of its Subsidiaries, or Administrative Agent as loss payee, of any Net Insurance/Condemnation Proceeds, Company shall offer to prepay the Loans as set forth in Sections 2.14(b) and 2.14(d) in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided, so long as no Default or Event of Default shall have occurred and be continuing on or as of such first Business Day, Company shall have the option (exercisable upon written notice thereof to Administrative Agent on or prior to such first Business Day), directly or through one or more of its Subsidiaries to invest such Net Insurance/Condemnation Proceeds within three hundred and sixty five (365) days of receipt thereof in long-term productive assets of the general type used in the business of Holdings and its

Subsidiaries, which investment may include the repair, restoration or replacement of the applicable assets thereof (it being expressly agreed that any Net Insurance/Condemnation Proceeds not so invested shall immediately be offered to be applied as set forth in Sections 2.14(b) and 2.14(d)); provided, further, pending any such investment at any time that Net Insurance/Condemnation Proceeds not so invested shall equal or exceed $5,000,000 in the aggregate, an amount equal to all such Net Insurance/Condemnation Proceeds shall be deposited by Company, unless waived by Administrative Agent in its sole discretion, in a deposit account maintained at Administrative Agent (it being understood that, (x) so long as no Default or Event of Default shall have occurred and be continuing, Administrative Agent shall release or consent to the release of such funds to Company upon delivery to Administrative Agent of a certificate of an officer of Company certifying that such funds shall, upon release of such funds, be applied in accordance this Section 2.13(b) and (y) to the extent such amounts are not applied in accordance with, and at the times required by, this Section 2.13(b), all such funds then held by Administrative Agent shall be immediately applied by Administrative Agent, or immediately paid over to Administrative Agent to be applied, as set forth in Section 2.14(b)).

(c) Issuance of Debt. No later than the first Business Day following the date of receipt by Holdings or any of its Subsidiaries of any Cash proceeds from the incurrence of any Indebtedness of Holdings or any of its Subsidiaries (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1), Company shall offer to prepay the Loans as set forth in Sections 2.14(b) and 2.14(d) in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

(d) Consolidated Excess Cash Flow. In the event that there shall be Consolidated Excess Cash Flow for any Fiscal Year (commencing with Fiscal Year 2008), Company shall, no later than one hundred fifty (150) days after the end of such Fiscal Year, offer to prepay the Loans as set forth in Sections 2.14(b) and 2.14(d) in an aggregate amount equal to 50% of such Consolidated Excess Cash Flow.

(e) Prepayment Certificate. Concurrently with any prepayment of the Loans pursuant to Sections 2.13(a) through 2.13(d), Company shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds or Consolidated Excess Cash Flow as the case may be. In the event that Company shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Company shall promptly make an additional prepayment of the Loans and Company shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments. Any prepayment of any Loan pursuant to Section 2.12 shall be applied to prepay Term Loans on a pro rata basis to the remaining scheduled Installments of principal of the Term Loans.

(b) Application of Mandatory Prepayments. Subject to Section 2.14(d), any prepayment of any Loan pursuant to Section 2.13 shall be applied to prepay Term Loans on a pro rata basis to the remaining scheduled Installments of principal of the Term Loans.

(c) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Considering each Class of Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Section 2.17(c).

(d) Lender Opt-out. With respect to any prepayment of Term Loans pursuant to Section 2.13, any Lender, at its option, may elect not to accept such prepayment. Upon the dates set forth in Section 2.13 for any such prepayment of Term Loans, the Borrower shall notify the Administrative Agent of the amount that is available to prepay the Term Loans (the "**Prepayment Amount**"). Promptly after the date of receipt of such notice, the Administrative Agent shall provide written notice (the "**First Offer**") to the Lenders of the amount available to prepay the Term Loans. Any Lender declining such prepayment (a "**Declining Lender**") shall give written notice thereof to the Administrative Agent by 11:00 a.m. no later than two (2) Business Days after the date of such notice from the Administrative Agent. On such date the Administrative Agent shall then provide written notice (the "**Second Offer**") to the Lenders other than the Declining Lenders (such Lenders being the "**Accepting Lenders**") of the additional amount available (due to such Declining Lenders' declining such prepayment) to prepay Term Loans owing to such Accepting Lenders, such available amount to be allocated on a pro rata basis among the Accepting Lenders that accept the Second Offer. Any Lender declining prepayment pursuant to such Second Offer shall give written notice thereof to the Administrative Agent by 11:00 a.m. no later than one (1) Business Day after the date of such notice of a Second Offer. The Borrower shall prepay the Loans as set forth in Section 2.13 within one Business Day after its receipt of notice from the Administrative Agent of the aggregate amount of such prepayment. Amounts remaining after the allocation of accepted amounts with respect to the First Offer and the Second Offer to Accepting Lenders shall be retained by the Borrower.

General Provisions Regarding Payments.

(a) All payments by Borrower of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 p.m. (New York City time) on the date due at Administrative Agent's Principal Office for the account of Lenders; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower on the next succeeding Business Day, at Administrative Agent's sole discretion.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.

(c) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period," whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

(f) Administrative Agent, at its sole discretion, shall deem any payment by or on behalf of Borrower hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.9 from the date such amount was due and payable until the date such amount is paid in full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, all payments or proceeds received by Agents hereunder in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 7.2 of the Pledge and Security Agreement.

(h) It is confirmed and acknowledged that no Permitted Loan Purchase (and the purchase price paid to any Lender in consideration of the purchase of such Lender's Loans in connection therewith) and no cancellation or retirement of Loans acquired in any Permitted

Loan Purchase shall constitute a payment or reduction of Loans or Obligations for purposes of this Section 2.15 or any other provision of this Agreement.

Ratable Sharing. Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may, so long as an Event of Default has occurred and is continuing, exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

Making or Maintaining Eurodollar Rate Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted Eurodollar Rate, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as Administrative Agent notifies Borrower and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by Borrower with respect to the

Loans in respect of which such determination was made shall be deemed to be rescinded by Borrower.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Borrower and Administrative Agent) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "**Affected Lender**" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to Borrower and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (3) the Affected Lender's obligation to maintain its outstanding Eurodollar Rate Loans (the "**Affected Loans**") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the

Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, Borrower shall have the option, subject to the provisions of Section 2.17(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.17(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss

of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by Borrower.

(d) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.17 and under Section 2.18 shall be made as though such Lender had actually funded each of its relevant Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Adjusted Eurodollar Rate in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its Eurodollar Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.17 and under Section 2.18.

Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.20 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the Closing Date, or compliance by such Lender with any guideline, request or directive issued or made after the Closing Date by any central bank, other Governmental Authority or quasi-governmental authority (whether or not having the force of law) (any such event, a "**Change in Law**"): (i) subjects such Lender (or its applicable lending office) to any additional Tax with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC

insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of Adjusted Eurodollar Rate); or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrower shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.18(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined that any Change in Law regarding capital adequacy has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Loans or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.18(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of any Credit Party or by any federation or

organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If any Credit Party or any other Person is required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: (i) Borrower shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Borrower becomes aware of it; (ii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty (30) days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty (30) days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrower shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, no such additional amount shall be required to be paid to any Lender under clause (iii) above except to the extent that any change after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement or Term Loan Joinder Agreement pursuant to which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Term Loan Joinder Agreement or Assignment Agreement, as the case may be, in respect of payments to such Lender.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-US Lender**") shall deliver to Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement or Term Loan Joinder Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such

Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver either Internal Revenue Service Form W-8ECI pursuant to clause (i) above, a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.19(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of Internal Revenue Service Form W-8BEN or W-8ECI, or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence. Borrower shall not be required to pay any additional amount to any Non-US Lender under Section 2.19(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence referred to in the second sentence of this Section 2.19(c), or (2) to notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.19(c) on the Closing Date, or on the date of the Assignment Agreement or Term Loan Joinder Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.19(c) shall relieve Borrower of its obligation to pay any additional amounts pursuant this Section 2.19 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.17, 2.18 or 2.19, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.17, 2.18 or 2.19 would be materially reduced and if, as

determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.20 unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described in clause (i) above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this Section 2.20 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

Call Protection. In the event that, after the Second Amendment Effective Date, but on or prior to the first anniversary of the Second Amendment Effective Date, any Lender receives (x) a prepayment of principal of the Loans pursuant to Section 2.12 or 2.13(c) or (y) a repayment of principal amount of the Loans as a result of the mandatory assignment of such Loans in the circumstances described in Section 2.22 following the failure of such Lender to consent to an amendment of this Agreement that would have the effect of reducing any of the Applicable Margin with respect to such Loans, then in each case, at the time thereof, the Borrower shall pay to such Lender a prepayment premium equal to 1.00 % of the principal amount of such prepayment or repayment.

Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a)(i) any Lender (an "**Increased-Cost Lender**") shall give notice to Representative that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.17, 2.18 or 2.19, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five (5) Business Days after Borrower's request for such withdrawal; or (b) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender or Non-Consenting Lender (the "**Terminated Lender**"), Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, or Administrative Agent may, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans, if any, in full to one or more Eligible Assignees satisfactory to Administrative Agent (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with

respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.10; (2) on the date of such assignment, Borrower shall pay any amounts payable to such Terminated Lender pursuant to

Section 2.17(c), 2.18 or 2.19, or otherwise as if it were a prepayment; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

SECTION 3. CONDITIONS PRECEDENT

Closing Date. The obligation of any Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Credit Documents. Administrative Agent shall have received (i) sufficient copies of this Agreement, executed and delivered by each applicable Credit Party, the Agents and Lenders having Term Loan Commitments hereunder and, (ii) Notes, if any, requested by any Lender pursuant to Section 2.6(c) in connection with its Term Loan Commitments, executed and delivered by Borrower.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) copies of each Organizational Document for each Credit Party, certified as of a recent date prior to the Closing Date by the appropriate governmental official or, as applicable, by an officer of such Credit Party; (ii) signature and incumbency certificates of the officers of each Credit Party executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Governmental Authorizations and Consents.

(i) Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or

advisable in connection with the transactions contemplated under this Agreement and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent.

(ii) Each of the Lenders shall have received, at least five (5) Business Days in advance of the Closing Date, all documentation and other information required by Governmental Authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including, without limitation, as required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

(d) Term Priority Collateral. The Administrative Agent shall be satisfied with the valid perfected First Priority security interest in favor of Collateral Agent, for the benefit of Secured Parties, in the Term Priority Collateral.

(e) ABL Priority Collateral. The Administrative Agent shall be satisfied with the valid perfected Second Priority security interest in favor of Collateral Agent, for the benefit of Secured Parties, in the ABL Priority Collateral of each Credit Party.

(f) Opinion of Counsel to Credit Parties. Lenders and their respective counsel shall have received originally executed copies of the favorable written opinion of Gibson, Dunn & Crutcher LLP, counsel for Credit Parties, in form and substance satisfactory to the Administrative Agent, dated as of the Closing Date (and each Credit Party hereby instructs such counsel to deliver such opinion to Agents and Lenders).

(g) Fees. Borrower shall have paid to Arranger and Agents the fees and other amounts payable on the Closing Date referred to in Section 2.10.

(h) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate dated as of the Closing Date and addressed to Administrative Agent and Lenders, in form, scope and substance satisfactory to Administrative Agent, with appropriate attachments and demonstrating that after giving effect to the transactions contemplated by the Credit Documents and the Revolving Credit Documents, Borrower is and will be, and Holdings and its Subsidiaries (on a consolidated basis) are and will be Solvent.

(i) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any

court or before any arbitrator or Governmental Authority that, in the opinion of Administrative Agent, singly or in the aggregate, could reasonably be expected to restrain, prevent or impose materially burdensome conditions on the transactions contemplated by this Agreement or the other Credit Documents.

(j) No Material Adverse Effect. Since December 31, 2006, there shall not have occurred a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of Company and its Subsidiaries, taken as a whole.

(k) Existing Credit Agreement Prepayments. The Administrative Agent shall be satisfied that, concurrently with the borrowing of the Term Loans on the Closing Date, the Existing Credit Agreement will be terminated, all Liens securing obligations under the Existing Agreement will be released, and all obligations under the Existing Credit Agreement repaid in full.

(l) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent and its counsel shall be satisfactory in form and substance to Administrative Agent and such counsel, and Administrative Agent and such counsel shall have received all such counterpart originals or certified copies of such

documents as Administrative Agent may reasonably request.

(m) Revolving Credit Facility. Borrower shall have entered into the Revolving Credit Facility and the Revolving Credit Documents shall be satisfactory to the Administrative Agent.

(n) Blocked Account Agreement. Enter into a Blocked Account Agreement with respect to each Deposit Account of any Credit Party.

(o) Closing Date Certificate. The Administrative Agent shall have received a certificate signed by the chief financial officer of the Borrower dated the Closing Date, certifying (A) that the conditions specified in Section 3.1(a) have been satisfied, (B) that the representations and warranties contained in Section 4 are true and correct and (C) that no event shall have occurred and be continuing or would result from the consummation of the Credit Extensions on the Closing Date that would constitute an Event of Default or a Default.

(p) Funding Notice. Administrative Agent shall have received a fully executed and delivered Funding Notice.

(q) Representations and Warranties. As of the Closing Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of the Closing Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date.

(r) Event of Default or a Default. As of the Closing Date, no event shall have occurred and be continuing or would result from the consummation of the Credit Extensions that would constitute an Event of Default or a Default.

Each Lender, by delivering its signature page to this Agreement on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved on the Closing Date.

Notices. Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing, conversion/continuation, as the case may be; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the applicable date of borrowing, continuation/conversion. Neither Administrative Agent nor any Lender shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of Borrower or for otherwise acting in good faith.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to each Lender, on the Closing Date and on each Credit Date, that the following statements are true and correct:

Organization; Requisite Power and Authority; Qualification. Each of Holdings and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1 (subject to such changes as are permitted by Section 6.9), (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2 Capital Stock and Ownership. The Capital Stock of each of Holdings and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Holdings or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Holdings or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Holdings or any of its Subsidiaries of any additional membership interests or other Capital Stock of Holdings or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Holdings or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Holdings and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

4.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4 No Conflict. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to Holdings or any of its Subsidiaries, any of the Organizational Documents of Holdings or any of its Subsidiaries; (b) violate any order, judgment or decree of any court or other agency of government binding on Holdings or any of its Subsidiaries except to the extent such violation could not be reasonably expected to have a Material Adverse Effect; (c) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Holdings or any of its Subsidiaries except to the extent such violation could not reasonably be expected to have a Material Adverse Effect; (d) result in or require the creation or imposition of any Lien upon any of the properties or assets of Holdings or any of its Subsidiaries (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or (e) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Holdings or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

4.5 Governmental Consents. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except to the extent obtained on or before the Closing Date, and except for filings and recordings with respect to the Collateral made or to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date.

4.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding

obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7 Financial Condition. Holdings has heretofore delivered to Administrative Agent (a) the audited consolidated balance sheet of Company and its Subsidiaries for the Fiscal Years ended December 31, 2004, December 31, 2005 and December 31, 2006, and the related audited consolidated statements of income, stockholders' equity and cash flows of each of such companies for each such Fiscal Year then ended, together with all related notes and schedules thereto, and (b) the unaudited consolidated balance sheet of Company and its Subsidiaries for the three-month period ended March 30, 2007 and the related unaudited consolidated statements of income, stockholders' equity and cash flows of the Company and its Subsidiaries for such three-month period then ended, together with all related notes and schedules thereto. All such statements of Company and its Subsidiaries were prepared in conformity with GAAP and fairly present, in all material respects, the financial position of the entities described in such financial statements as at the respective dates thereof and the results of operations and cash flows of the entities described therein for each of the periods then ended, subject, in the case of such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnotes. As of the Closing Date, neither Company nor any of its Subsidiaries has any contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the foregoing financial statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company and its Subsidiaries taken as a whole.

4.8 Projections. On and as of the Closing Date, the projections of Holdings and its Subsidiaries for (x) the period Fiscal Year 2007 through and including Fiscal Year 2013 and (y) the Fiscal Quarters beginning with the second Fiscal Quarter of 2007 through and including the fourth Fiscal Quarter of 2008 (collectively, the "**Projections**") previously delivered to Administrative Agent and the Lenders are based on good faith estimates and assumptions made by the management of Holdings, it being recognized, however, that projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from the projected results and that the differences may be material.

4.9 No Material Adverse Change. Since December 31, 2006, except as set forth in Schedule 4.9, no event, circumstance or change has occurred that has caused or evidences, or could reasonably be expected to cause, either in any case or in the aggregate, a Material Adverse Effect.

4.10 No Restricted Payments. Neither Holdings nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Payment or agreed to do so except as permitted pursuant to Section 6.5.

4.11 Litigation; Adverse Facts. Except as set forth in Schedule 4.11 hereto, there are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.12 Payment of Taxes. Except as otherwise permitted under Section 5.3, all tax returns and reports of Holdings and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Holdings and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Neither Holdings nor any of its Subsidiaries knows of any proposed tax assessment against Holdings or any of its Subsidiaries other than those which are being actively contested by Holdings or such Subsidiary in good faith and by appropriate proceedings and for which reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13 Properties.

(a) Title. Each of Holdings and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in the most recent financial statements delivered to the Administrative Agent, in each case except for assets disposed of (x) since the date of such financial statements and prior to the Closing Date in the ordinary course of business or (y) as otherwise permitted under Section 6.9 and except for such defects that neither individually nor in the aggregate could reasonably be expected to have a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof), if any, affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Holdings does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its

terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

(c) Intellectual Property. Company and its Subsidiaries own or have the valid right to use all material Intellectual Property, and all Intellectual Property is free and clear of any and all Liens other than Liens securing the Obligations and Liens permitted pursuant to Section 6.2(i). Any registrations in respect of the Intellectual Property are in full force and effect and are valid and enforceable. The conduct of the business of Company and its Subsidiaries as currently conducted, and as currently contemplated to be conducted, including, but not limited to, all products, processes or services, made, offered or sold by Company and its Subsidiaries, does not and will not infringe upon, violate, misappropriate or dilute any intellectual property of any third party which infringement, violation, misappropriation or dilution could reasonably be expected to have a Material Adverse Effect. To the knowledge of Holdings, Company or any of its Subsidiaries, no third party is infringing upon or misappropriating, violating or otherwise diluting any Intellectual Property where such infringement, misappropriation, violation or dilution could reasonably be expected to have a Material Adverse Effect. Neither Holdings, Company nor any of its Subsidiaries is enjoined from using any material Intellectual Property, and except as could reasonably be expected to have a Material Adverse Effect, there is no pending or, to the knowledge of Holdings, Company or any of its Subsidiaries, threatened claim or litigation contesting (i) any right of Company or any of its Subsidiaries to own or use any Intellectual Property, or (ii) the validity or enforceability of any Intellectual Property.

4.14 Environmental Matters. Except as set forth in Schedule 4.14 hereto: (i) neither Holdings nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity which individually or in the aggregate would reasonably be expected to have a Material Adverse Effect; (ii) as of the Closing Date, or except as otherwise reported to the Administrative Agent after the Closing Date, neither Holdings nor any of its Subsidiaries has received within the last ten (10) years any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604), or

any comparable state law; (iii) there are and, to each of Holdings' and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which would reasonably be expected to form the basis of an Environmental Claim against Holdings or any of its Subsidiaries, which individually or in the aggregate would reasonably be expected to have a Material Adverse Effect; and (iv) neither Holdings nor any of its Subsidiaries nor, to any Credit Party's knowledge, any predecessor of Holdings or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Holdings' or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent, which individually or in the aggregate would reasonably be expected to have a Material Adverse Effect. Notwithstanding anything to the contrary in this Section 4.14, compliance with all current or reasonably foreseeable future requirements pursuant

to or under Environmental Laws would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect and no event or condition has occurred or is occurring with respect to Holdings or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity, including, without limitation, any matter included in Schedule 4.14, which individually or in the aggregate has had, or would reasonably be expected to have, a Material Adverse Effect.

4.15 No Defaults. Neither Holdings nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations or covenants contained in (i) any of its Contractual Obligations (other than the Credit Documents and the Revolving Credit Documents), and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect and (ii) any Credit Document and any Revolving Credit Document.

4.16 Governmental Regulation. Neither Holdings nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither Holdings nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.17 Margin Regulations. Neither Holdings nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of the Loans nor the pledge of the Collateral pursuant to the Collateral Documents, violates Regulation T, U or X of the Board of Governors of the Federal Reserve System. No part of the proceeds of the Loans made to such Credit Party will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of said Board of Governors.

4.18 Employee Matters. Neither Holdings nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. Except as set forth in Schedule 4.18, there is (a) no unfair labor practice complaint pending against Holdings or any of its Subsidiaries, or to the best knowledge of Holdings and Company, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Holdings or any of its Subsidiaries or to the best knowledge of Holdings and Company, threatened against any of them, and the hours worked by and payments made to employees of Holdings or any of its Subsidiaries have not violated the Fair Labor Standards Act or any other law dealing with such matters, (b) no strike or work stoppage in existence or threatened involving Holdings or any of its Subsidiaries, and (c) to the best knowledge of

Holdings and Company, no union representation question existing with respect to the employees of Holdings or any of its Subsidiaries and, to the best knowledge of Holdings and Company, no union organization activity that is taking place; which in each case in clause (a), (b) or (c) above (including, without limitation, any matter included in Schedule 4.18), could either individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

4.19 Employee Benefit Plans. Holdings, each of its Subsidiaries and each of their respective ERISA Affiliates are in material compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan in all material respects. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which reasonably would be expected to cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or reasonably is expected to be incurred by Holdings, any of its Subsidiaries or any of their ERISA Affiliates. Except as set forth in Schedule 4.19 (and except for changes in matters identified in Schedule 4.19 that are not, individually or in the aggregate, material), no ERISA Event has occurred or is reasonably expected to occur. Except as set forth in Schedule 4.19, and except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates. Except as set forth in Schedule 4.19 (and except for changes in matters identified in Schedule 4.19 that are not, individually or in the aggregate, material), the present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Holdings, any of its Subsidiaries or any of their ERISA Affiliates, (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. Neither Holdings, its Subsidiaries nor their respective ERISA Affiliates maintains, contributes to or is required to contribute to any Multiemployer Plan.

4.20 Certain Fees. Except as otherwise disclosed in writing to Administrative Agent and Arranger, no broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby, and Company hereby indemnifies Lenders, Agents and Arranger against, and agrees that it will hold Lenders, Agents and Arranger harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

4.21 Solvency. Borrower is, and Holdings and its Subsidiaries (on a consolidated basis), are, and, upon the incurrence of any Obligation by any Credit Party on any date on which this representation and warranty is made, will be, Solvent.

4.22 Collateral.

(a) Collateral Documents. The security interests created in favor of Collateral Agent under the Collateral Documents constitute, as security for the obligations purported to be secured thereby, a legal, valid and enforceable security interest in all of the Collateral referred to therein in favor of Collateral Agent for the benefit of the Lenders. The security interests in and Liens upon the Collateral described in the Collateral Documents are valid and perfected First Priority or Second Priority Liens (in accordance with the priorities set forth in the Intercreditor Agreement) to the extent such security interests and Liens can be perfected by such filings and recordations. No consents, filings or recordings are required in order to perfect (or maintain the perfection or priority of) the security interests purported to be created by any of the Collateral

Documents, other than (i) such as have been obtained and which remain in full force and effect, (ii) the periodic filing of UCC continuation statements in respect of UCC financing statements filed by or on behalf of Collateral Agent, and (iii) with respect to such items of Collateral as to which this Agreement or the Collateral Documents do not require any consent, filing or recordation.

(b) Absence of Third Party Filings. Except such as may have been filed in favor of Collateral Agent as contemplated by Section 4.23(a) above and except as set forth on Schedule 4.22 annexed hereto or, after the Closing Date, as may have been filed with respect to a Lien permitted by Section 6.2, (i) no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office and (ii) no effective filing with respect to a Lien covering all or any part of the Collateral is on file with the United States Patent and Trademark Office or United States Copyright Office or any other Governmental Authority.

4.23 Disclosure. No representation or warranty of Holdings and its Subsidiaries contained in any Credit Document or in any other documents, certificates or written statements furnished to Lenders by or on behalf of Holdings or any of its Subsidiaries for use in connection with the transactions contemplated hereby or thereby contains any untrue statement of a material fact or omits (when taken as a whole) to state a material fact (known to Holdings or Company, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Holdings or Company to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There is no fact known to Holdings or Company (other than matters of a general economic nature) that, individually or in the aggregate, has had, or could reasonably be expected to result in, a Material

Adverse Effect and that has not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

4.24 Deposit Accounts

Annexed hereto as Schedule 4.24 is a list of all Deposit Accounts maintained by the Credit Parties as of the Closing Date, which Schedule includes, with respect to each deposit account (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository.

SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that so long as any Commitment is in effect and until payment in full of all Obligations, each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1 Financial Statements and Other Reports. Holdings will deliver to Administrative Agent and Collateral Agent for each Lender:

(a) [RESERVED]

(b) Quarterly Financial Statements. Within two (2) Business Days after the date on which Holdings files or is required to file its Form 10-Q under the Exchange Act (but without giving effect to any extension pursuant to Rule 12b-25 under the Exchange Act (or any successor rule) or otherwise) (or, if Holdings is not required to file a Form 10-Q under the Exchange Act, within fifty (50) days after the end of each of the first three Fiscal Quarters of each Fiscal Year (commencing with the Fiscal Quarter ending June 30, 2007)), (i) the consolidated and consolidating balance sheets of Holdings and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated (and with respect to statements of income, consolidating) statements of income and cash flows of Holdings and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all prepared in accordance with GAAP and in reasonable detail and certified by the chief financial officer, senior vice president-finance, treasurer or controller of Company or Holdings that they fairly present, in all material respects, the consolidated financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and the absence of footnotes, and (ii) a narrative report describing the financial condition and results of operations of Holdings and its Subsidiaries for such Fiscal Quarter in form and substance reasonably satisfactory to Administrative Agent;

(c) Annual Financial Statements. Within two (2) Business Days after the date on which the Holdings files or is required to file its Form 10-K under the Exchange Act (but without giving effect to any extension pursuant to Rule 12b-25 under the Exchange Act (or any successor rule) or otherwise) (or, if Holdings is not required to file a Form 10-K under the Exchange Act, within one hundred (100) days after the end of each Fiscal Year (commencing with the Fiscal Year ending December 31, 2007)), (i) the consolidated and consolidating balance sheets of Holdings and its Subsidiaries as at the end of such Fiscal Year and the related consolidated (and with respect to statements of income, consolidating) statements of income, stockholder's equity and cash flows of Holdings and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, all prepared in accordance with GAAP and in reasonable detail and certified by the chief financial officer, senior vice president-finance, treasurer or controller of Company or Holdings that they fairly present, in all material respects, the consolidated financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, and (ii) a narrative report describing the financial condition and results of operations of Holdings and its Subsidiaries in form and substance reasonably satisfactory to Administrative Agent; (iii) with respect to such consolidated financial statements a report thereon of independent certified public accountants of recognized national standing selected by Holdings, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) together with a written statement by such independent certified public accountants stating (1) that their audit examination has included a review of the terms of the Credit Documents, and (2) whether, in connection therewith, any condition or event that constitutes a Default or an Event of Default under Section 6.8 or otherwise with respect to accounting matters has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof;

(d) Compliance Certificate. Together with each delivery of financial statements of Holdings and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the financial statements referred to in Section 4.7, the consolidated financial statements of Holdings and its Subsidiaries delivered pursuant to Section 5.1(b) or 5.1(c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or

more statements of reconciliation for all such prior financial statements in form and substance reasonably satisfactory to Administrative Agent;

(f) Notice of Default, etc. Promptly upon, and in any event within five (5) days after, any officer of Holdings or any of its Subsidiaries obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Holdings or any of its Subsidiaries with respect thereto; (ii) that any Person has given any notice to Holdings or any of its Subsidiaries or taken any other action with respect to any claimed default or event or condition of the type referred to in Section 8.1(b); or (iii) of the occurrence of any event or change that has caused or evidences or would reasonably be expected to have, either in any case or in the aggregate, a Material Adverse Effect; a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Holdings or the applicable Subsidiary has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon, and in any event within five (5) days after, any officer of Holdings or any of its Subsidiaries obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Company to Lenders, or (ii) any material development in any Adverse Proceeding that, in the case of either (i) or (ii) if adversely determined, could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Holdings or any of its Subsidiaries to enable Lenders and their counsel to evaluate such matters;

(h) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan and (2) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(i) Financial Plan. As soon as practicable and in any event no later than 90 days after the beginning of each Fiscal Year, a monthly consolidated and consolidating plan and financial forecast for such Fiscal Year (a '**Financial Plan**"), including a forecasted consolidated balance sheet and forecasted consolidated and consolidating statements of income and consolidated statement of cash flows of Holdings and its Subsidiaries for such Fiscal Year, together with pro forma Compliance Certificates for each such Fiscal Year and an explanation of the assumptions on which such forecasts are based;

(j) Insurance Report. As soon as practicable and in any event by the last day of each calendar year, a report in form and substance reasonably satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such report by Holdings and its Subsidiaries and all material insurance coverage planned to be maintained by Holdings and its Subsidiaries in the immediately succeeding calendar year;

(k) Accountants' Reports. Promptly upon receipt thereof (unless restricted by applicable professional standards), copies of all reports submitted to Holdings or Company by independent certified public accountants in connection with each annual, interim or special audit of the financial statements of Holdings and its Subsidiaries made by such accountants, including any comment letter submitted by such accountants to management in connection with their annual audit;

(l) [RESERVED]

(m) Environmental Reports and Audits. As soon as practicable following receipt thereof, copies of all environmental audits and reports, whether prepared by personnel of Company or any of its Subsidiaries or by independent consultants, with respect to environmental matters at any Facility or which relate to any environmental liabilities of Holdings or its Subsidiaries which, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(n) Other Information. (A) Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by Holdings to holders of its Indebtedness or to holders of its public equity securities or by any Subsidiary of Holdings to its security holders other than Holdings or another Subsidiary of Holdings, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by Holdings or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, (iii) all press releases and other statements made available generally by Holdings or any of its Subsidiaries to the public concerning material developments in the business of Holdings or any of its Subsidiaries, and (B) such other information and data with respect to Holdings or any of its Subsidiaries (including, without limitation, financial statements with respect to Holdings and its Subsidiaries) as from time to time may be reasonably requested by Administrative Agent or any Lender;

Existence. Except as otherwise permitted under Section 6.9, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect (i) its existence and (ii) all rights and franchises, licenses and permits material to the business of Holdings and its Subsidiaries (on a consolidated basis).

Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable which, if unpaid, might become a Lien upon any of its properties or assets; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Holdings or any of its Subsidiaries).

Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties owned by Holdings, Company or its Subsidiaries or used or useful in the business of Company and its Subsidiaries (including all Intellectual Property) and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

Insurance. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Company and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name the

Administrative Agent, the Collateral Agent and the Lenders as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names the Collateral Agent, on behalf of Lenders as the loss payee thereunder and provides for at least thirty (30) days' prior written notice to Collateral Agent of any modification or cancellation of such policy.

Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by Administrative Agent, Collateral Agent or

any Lender (and, in the case of any Lender, accompanied by Administrative Agent or Collateral Agent) to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect the Collateral, or otherwise to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their properties, assets, affairs, finances and accounts with its and their officers and independent public accountants (it being understood that, prior to the occurrence and continuance of an Event of Default, (x) any such discussions or meetings shall be limited to Administrative Agent and (y) in the case of discussions or meetings with the independent public accountants, only if Company has been given the opportunity to participate in such discussions or meetings), all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

Lenders Meetings. Holdings and Company will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent and Lenders once during each calendar year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Company and Administrative Agent.

Compliance with Laws. Each Credit Party will comply, and shall cause each of its Subsidiaries to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Environmental.

(a) Environmental Disclosure. Each Credit Party will, and will cause each of its Subsidiaries to, deliver to Administrative Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all material environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Holdings or any of its Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims; provided, however, that this Section 5.9(a)(i) shall not apply to communications covered by valid claims of attorney client privilege or to attorney work product generated by legal counsel to Holdings or any of its Subsidiaries;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any

federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (2) any remedial action taken by Holdings or any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (3) Holdings or any of its Subsidiaries' discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Holdings or any of its Subsidiaries, a copy of any and all written communications to or from any Governmental Authority or any Person bringing an Environmental Claim against Holdings or any of its Subsidiaries with respect to: (1) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (2) any Release required to be reported to any Governmental Authority, and (3) any written request for information from any Governmental Authority stating such Governmental Authority is investigating whether Holdings or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity; and

(iv) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this Section 5.9(a).

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Subsidiaries. In the event that any Person becomes a Domestic Subsidiary of Company, Company shall (a) promptly, and in any event within ten (10) days, cause such

Domestic Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative Agent and Collateral Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all Perfection Deliverables and such documents, instruments, agreements, opinions and certificates as are similar to those described in Sections 3.1(b) and 3.1(f), and any other actions required by the Pledge and Security Agreement. In the event that any Person becomes a Foreign Subsidiary of Company, and the ownership interests of such Foreign Subsidiary are owned by Company or by any Domestic Subsidiary thereof, Company shall, or shall cause such Domestic Subsidiary to, promptly, and in any event within ten (10) days, deliver all such documents, instruments, agreements, and certificates as are similar to those described in Section 3.1(b), and Company shall take, or shall cause such Domestic Subsidiary to take, all of the actions referred to in clause (i) of the definition of "Perfection Deliverables" necessary to grant and to perfect a First Priority of Second Priority Lien (in accordance with the priorities set forth in the Intercreditor Agreement) in favor of Collateral Agent, for the benefit of Secured Parties, under the Pledge and Security Agreement in 66% of such ownership interests. With respect to each such Subsidiary, Company shall promptly send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Company, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with

respect to all Subsidiaries of Company; provided, such written notice upon Administrative Agent's approval of the contents therein shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof. Notwithstanding anything to the contrary in this Section 5.10, the requirements of this Section 5.10 shall not apply to any property or Subsidiary created or acquired after the Closing Date, as to which the Collateral Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein. The Collateral Agent is hereby authorized by the Lenders to enter into such amendments to the Collateral Documents as the Collateral Agent deems necessary to effectuate the provisions of this Section 5.10.

Additional Real Estate Assets. In the event that any Credit Party acquires, or any Person that becomes a Credit Party holds, a Real Estate Asset that is (a) a fee interest with a fair market value equal to or greater than $500,000 or (b) a leasehold interest with a value that Administrative Agent in its sole discretion, after consultation with Company, determines is material, and such interest has not otherwise been made subject to a perfected First Priority or Second Priority Lien (in accordance with the priorities set forth in the Intercreditor Agreement) of the Collateral Documents in favor of Collateral Agent, for the benefit of Secured Parties, then such Credit Party shall, promptly, and in any event within ten (10) days of such Credit Party acquiring such Real Estate Asset or such Person becoming a Credit Party, take all such actions and execute and deliver, or cause to be executed and delivered, all Real Estate Asset Deliverables and Perfection Deliverables with respect to each such Real Estate Asset to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority or Second Priority Lien (in accordance with the priorities set forth in the Intercreditor Agreement) in such Real Estate Assets, and reports and other information reasonably satisfactory to Administrative Agent regarding environmental matters (including, without limitation, a Phase I Report) with respect to such Real Estate Assets. In addition to the foregoing, Company shall, at the request of Requisite Lenders, deliver, from time to time (but, prior to the occurrence and during the continuance of a

Default or Event of Default, not more than once every two calendar years), to Administrative Agent such appraisals of Real Estate Assets with respect to which Collateral Agent has been granted a Lien. Notwithstanding anything to the contrary in this Section 5.11, the requirements of this Section 5.11 shall not apply to any Real Estate Asset acquired after the Closing Date, as to which the Collateral Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein. The Collateral Agent is hereby authorized by the Lenders to enter into such amendments to the Collateral Documents as the Collateral Agent deems necessary to effectuate the provisions of this Section 5.11.

[Reserved].

Further Assurances. At any time or from time to time upon the request of Administrative Agent or Collateral Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guarantied by the Guarantors and are secured by substantially all of the assets of Holdings, and its Subsidiaries and all of the outstanding Capital Stock of Company and its Subsidiaries (in each case subject to limitations contained in the Credit Documents with respect to Foreign Subsidiaries).

ERISA. Neither Holdings, its Subsidiaries or their respective ERISA Affiliates shall establish, maintain, contribute to, or become required to contribute to any Multiemployer Plan.

Maintenance of Credit Rating. Holdings shall use its commercially reasonable efforts (including the timely payment of all customary amounts and the timely submission of all customary documentation) to ensure that (i) the credit facility provided for under this Agreement shall at all times have a credit rating assigned by S&P and Moody's and (ii) the Borrower shall at all times have a corporate credit rating assigned by S&P and Moody's; provided, however, that in the event either S&P or Moody's ceases to exist, ceases to be in the business of issuing ratings in respect of credit facilities, or the rating of such facilities is not otherwise obtainable from such agencies, then Holdings shall use its commercially reasonable efforts (including the timely payment of all customary amounts and the timely submission of all customary documentation) to ensure that such facilities are rated by another nationally recognized statistical rating agency acceptable to Administrative Agent.

SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

Indebtedness. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Company may become and remain liable with respect to Indebtedness to any of its wholly-owned Guarantor Subsidiaries, and any wholly-owned Guarantor Subsidiary of Company may become and remain liable with respect to Indebtedness to Company or any other wholly-owned Guarantor Subsidiary of Company; provided, (i) all such Indebtedness under this subclause (b) shall be (x) evidenced by promissory notes and all such notes shall be subject to a First Priority or Second Priority Lien (in accordance with the priorities set forth in the Intercreditor Agreement) pursuant to the Pledge and Security Agreement and (y) unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to Administrative Agent, and (ii) any payment by any such Subsidiary under any guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Indebtedness owed by such Subsidiary to Company or to any of its Subsidiaries for whose benefit such payment is made;

(c) [RESERVED];

(d) Indebtedness of Company and its Subsidiaries arising in respect of netting services or overdraft protections with deposit accounts; provided, that such Indebtedness is extinguished within three (3) Business Days of its incurrence;

(e) guaranties by Company of Indebtedness of a Guarantor Subsidiary or guaranties by a Subsidiary of Company of Indebtedness of Company or a Guarantor Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1;

(f) Indebtedness of Company and its Subsidiaries existing on the Closing Date and described in Schedule 6.1, but not any extensions, renewals, refinancings or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not materially less favorable (taken as a whole) to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the

Indebtedness being extended, renewed or refinanced or (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced;

(g) purchase money Indebtedness of Company and its Subsidiaries and Capital Leases (other than in connection with sale-leaseback transactions) of Company and its Subsidiaries, in each case incurred in the ordinary course of business to provide all or a portion of the purchase price or cost of construction of an asset or an improvement of an asset not constituting part of the Collateral; provided, that (A) such Indebtedness when incurred shall not exceed the purchase price or cost of improvement or construction of such asset, (B) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing, (C) such Indebtedness shall be secured only by the asset acquired, constructed or improved in connection with the incurrence of such Indebtedness and (D) the aggregate principal amount of all such Indebtedness shall not exceed $7,500,000 at any time outstanding;

(h) other Indebtedness of Company and its Subsidiaries, which is unsecured, in an aggregate principal amount not to exceed $10,000,000 at any time outstanding;

(i) Indebtedness of Company under any Interest Rate Agreement or Currency Agreement entered into for hedging purposes and in form and substance reasonably satisfactory to the Administrative Agent;

(j) Indebtedness evidenced by the Revolving Credit Documents in an aggregate amount not to exceed an amount equal to $60.0 million (less the amount of all permanent reductions of the Revolving Loan Commitments (as defined in the Revolving Credit Facility)) and any Permitted Refinancing of the Revolving Credit Facility;

(k) additional senior unsecured or subordinated unsecured Indebtedness, the terms and conditions of which (i) shall provide for a maturity date no earlier than 180 days after the Additional Term Loan Maturity Date hereunder and with no scheduled amortization or other scheduled payments of principal prior to such date and (ii) shall be reasonably satisfactory to Administrative Agent; provided, that (A) after giving pro forma effect to the incurrence of such Indebtedness (and, if applicable, giving pro forma effect to any Subject Transaction pursuant to Section 6.8(c)), (1) the Leverage Ratio is not greater than 4.0 to 1.0 or (2) the Consolidated Coverage Ratio is at least 2.0 to 1.0 and (B) no Default or Event of Default has occurred or is continuing at the time of incurrence or would result therefrom;

(l) Indebtedness of a Person existing at the time such Person becomes a Subsidiary of Company following the Closing Date, which Indebtedness is in existence at the time such Person becomes a Subsidiary and is not created in connection with or in contemplation of such Person becoming a Subsidiary; provided that the aggregate principal amount of all such Indebtedness in the aggregate shall not exceed $5,000,000 at any time outstanding;

(m) Indebtedness of Holdings which is unsecured and subordinated to the Obligations in a manner satisfactory to Administrative Agent and which is issued in connection with the redemption or replacement of any preferred Capital Stock of Holdings, in principal amount not to exceed the amount of such preferred Capital Stock being redeemed or replaced, the terms and conditions of which (i) shall provide for a maturity date at least one year after the Additional Term Loan Maturity Date hereunder, with no scheduled amortization of principal or mandatory prepayments prior to such date, (ii) no scheduled or mandatory cash interest payments prior to such date, except to the extent Holdings has sufficient cash therefor and (iii) shall otherwise be satisfactory to Administrative Agent;

(n) Capital Leases of Company entered into in connection with sale-leaseback transactions permitted by Section 6.3;provided, that (A) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing and (B) such Indebtedness shall be secured only by the facility which is the subject of such Capital Lease; and

(o) additional secured Indebtedness, the terms and conditions of which (i) shall provide for a maturity date at least 180 days after the Additional Term Loan Maturity Date hereunder with no scheduled amortization of principal prior to such date, (ii) unless reasonably satisfactory to the Administrative Agent pursuant to clause (iii) below, shall be no more restrictive (without taking into account fees or interest rates), taken as a whole, than those set forth in the Term Loan Documents as in effect on the Closing Date, and (iii) shall otherwise be reasonably satisfactory to Administrative Agent; provided, that (A) after giving pro forma effect to the incurrence of such Indebtedness (and, if applicable, giving pro forma effect to any Subject Transaction pursuant to Section 6.8(c)), the Secured Debt Ratio is less than 2.5 to 1.0 and (B) no Default or Event of Default has occurred or is continuing at the time of incurrence or would result therefrom.

Liens. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Holdings, Company or any such Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens imposed by law for Taxes that are not yet required to be paid pursuant to Section 5.3;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by

law (other than any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five (5) days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, minor defects or irregularities in title and other similar charges, in each case which do not and will not interfere in any material respect with the use or value thereof or which appear on a title report delivered to Administrative Agent prior to the date hereof;

(f) any interest or title of a lessor or sublessor under any operating or true lease of real estate entered into by Company or its Subsidiaries in the ordinary course of its business covering only the assets so leased;

(g) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(h) any attachment or judgment Lien not constituting an Event of Default under Section 8.1(h);

(i) non-exclusive licenses of Intellectual Property granted by Company or any of its Subsidiaries in the ordinary course of business consistent with past practice and not interfering in any respect with the ordinary conduct of the business of Company or such Subsidiary;

(j) bankers liens and rights of set-off with respect to customary depositary arrangements entered into in the ordinary course of business of Company and its Subsidiaries;

(k) Liens granted by Company or its Subsidiaries existing on the Closing Date and described in Schedule 6.2; provided, that (A) no such Lien shall at any time be extended to

cover property or assets other than the property or assets subject thereto on the Closing Date and (B) the principal amount of the Indebtedness secured by such Liens shall not be extended, renewed, refunded, replaced or refinanced except as otherwise permitted by Section 6.1(f);

(l) Liens securing (i) Indebtedness permitted pursuant to Section 6.1(g), provided, any such Lien shall encumber only the asset acquired, constructed or improved with the proceeds of such Indebtedness and (ii) Indebtedness permitted pursuant to Section 6.1(n), provided any such Lien shall encumber only the facility with is the subject of such Capital Lease;

(m) Liens securing Indebtedness permitted under Section 6.1(l); provided that such Liens are of a type described in Section 6.2(l)(i) and are not created in contemplation of or in connection with such Person becoming a Subsidiary, such Liens will not apply to any other property of Holdings or any of its Subsidiaries, and such Liens will secure only those obligations secured by such Liens on the date such Person becomes a Subsidiary; and

(n) Liens securing Indebtedness permitted under Section 6.1(j) or 6.1(o).

Sales and Leasebacks. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which Holdings or any of its Subsidiaries has sold or transferred or is to sell or transfer to any other Person (other than Holdings or any of its Subsidiaries) or (b) which Holdings or any of its Subsidiaries intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than Holdings or any of its Subsidiaries) in connection with such lease; provided that Company and its Subsidiaries may (i) become and remain liable as lessee, guarantor or other surety with respect to any such lease which is a Capital Lease permitted pursuant to Section 6.1(g), and (ii) so long as no Default or Event of Default has occurred or is continuing or shall be caused thereby, sale-leaseback transactions in respect of up to any manufacturing Facilities owned by Company as of the Closing Date; provided, further, that (A) the material terms and conditions of such sale-leaseback transaction (including any Capital Lease in connection with such transaction) shall be reasonably satisfactory to the Administrative Agent, (B) Collateral Agent is granted a valid First Priority or Second Priority Lien (in accordance with the priorities set forth in the Intercreditor Agreement) in Company's leasehold interest in connection with such transaction, (C) the lessor (or lenders under any Capital Lease) in connection with such transaction shall agree to provide Collateral Agent access to the Collateral located at such facility pursuant to an agreement reasonably satisfactory to Administrative Agent and the Collateral Agent (the terms of which shall include subordination and non-disturbance provisions with respect to any such Collateral, and other terms as may be reasonably required by Administrative Agent or the Collateral Agent), (D) the amount of consideration payable to Company or its Subsidiaries (and the aggregate principal amount of Indebtedness in respect of any Capital Leases) in any such transaction shall not exceed the fair market value of any such facility (determined in good faith by the board of directors of Company (or similar governing body)), and shall not exceed $30,000,000 in the

aggregate and (E) the Net Asset Sale Proceeds with respect to any such Capital Lease shall be applied to repay Indebtedness to the extent required pursuant to Section 2.14(b).

No Further Negative Pledges. Except (i) pursuant to this Agreement, (ii) pursuant to the terms of Indebtedness permitted under Section 6.1(h), 6.1(j), 6.1(k) or 6.1(o), (iii) with respect to specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale, (iv) pursuant to customary non-assignment or no-subletting clauses in leases, licenses or contracts entered into in the ordinary course of business, which restrict only the assignment of such lease, license or contract, as applicable, or (v) in connection with purchase money financing or Capital Leases permitted under Section 6.1(g), 6.1(l) or 6.1(n) (in each case provided the prohibition applies only to the asset being acquired or constructed, or which is the subject of such Capital Lease), each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

Restricted Payments. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries or Affiliates through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Payment except that:

(a) Subsidiaries of Company may make Restricted Payments (i) to Company or to any parent entity of such Subsidiary which is a wholly-owned Guarantor Subsidiary and (ii) on a pro rata basis to the equity holders of any other Guarantor Subsidiary;

(b) (i) so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby, Company and its Subsidiaries may make prepayments and regularly scheduled payments of principal and interest in respect of any Indebtedness permitted under Sections 6.1(b), (ii) Company and its Subsidiaries may make scheduled payments and mandatory prepayments of principal, and regularly scheduled payments of interest in respect of and, so long as no Default or Event of Default shall have occurred and be continuing, voluntary repayments of, any Indebtedness permitted under Section 6.1(h), (iii) Company and its Subsidiaries may make mandatory prepayments and regularly scheduled payments of principal and interest in respect of any Indebtedness permitted under Section 6.1(k) (to the extent constituting subordinated Indebtedness) or 6.1(n), but only to the extent such payments are permitted by the terms, and subordination provisions (if any) applicable to, such Indebtedness, and (iv) Company and its Subsidiaries may make payments in respect of guarantees permitted under Section 6.1(e) to the extent the Indebtedness guaranteed thereby is permitted to be paid under this Section 6.5 (in each case under the foregoing subclauses (i), (ii) and (iii) in accordance with the terms of, and only to the extent required by, and subject to the subordination provisions contained in, the indenture or other agreement pursuant to which such Indebtedness as issued);

(c) Company may make Restricted Payments to Holdings to the extent reasonably necessary to permit Holdings (in each case so long as Holdings applies the amount of any such Restricted Payment for such purpose within five (5) days of receipt of such amount) (i) to pay general administrative and corporate overhead

costs and expenses (including, without limitation, expenses arising by virtue of Holdings' status as a public company (including fees and expenses related to filings with the Securities and Exchange Commission, roadshow expenses, printing expenses and fees and expenses of attorneys and auditors)), (ii) so long as no Default or Event of Default, in each case, in respect of Section 8.1(a), 8.1(f) or 8.1(g) shall have occurred and be continuing or shall be caused thereby, to pay the fees and expenses to Sponsor required to be paid under the Management Services Agreement, as in effect on December 16, 2004 or after giving effect to any amendment, restatement or other modification thereto in accordance with Section 6.15(a) hereof, (iii) to discharge the consolidated tax liabilities of Holdings and its Subsidiaries and (iv) so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby, to allow Holdings to repurchase shares of, or options to purchase shares of, Capital Stock of Holdings from employees, officers or directors of Holdings, Company or any Subsidiaries thereof in any aggregate amount not to exceed $1,000,000 in any calendar year or $5,000,000 in the aggregate since the Closing Date;

(d) (i) Company may make Restricted Payments to Holdings in an aggregate amount not to exceed the Restricted Payment Amount (measured on the date of such Restricted Payment); provided that, notwithstanding the foregoing, in any four Fiscal Quarter period, the Company may make Restricted Payments to Holdings in an amount not to exceed the Periodic Dividend Amount; provided further, that, in any case, any Restricted Payment under this Section 6.5(d)(i) may only be made so long as (w) no Default or Event of Default has occurred or is continuing or shall be caused thereby after giving effect to such Restricted Payment, (x) after giving effect to such Restricted Payment, Holdings and its Subsidiaries shall have satisfied the RP Conditions, (y) to the extent Consolidated Adjusted EBITDA for the Test Period most recently ended prior to such Restricted Payment is less than or equal to $40,000,000, after giving effect to such Restricted Payment, the total amount of Restricted Payments made pursuant to this Section 6.5(d)(i) during the Fiscal Quarter in which the subject Restricted Payment is to be paid and the three Fiscal Quarters most recently ended does not exceed any applicable Maximum Restricted Payment Amount, and (z) a Section 6.5(d) Certificate has been delivered; and (ii) Holdings may make Restricted Payments in an amount equal to the actual amount of Restricted Payments made by Company to Holdings pursuant to Section 6.5(d)(i) that have not previously been distributed by Holdings, so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby; provided, however, that notwithstanding anything to the contrary contained in this Section 6.5(d), this Section 6.5(d)(ii) shall not prohibit the payment of any dividend within 60 days after the date of declaration of such dividend if such dividend was permitted under this Section 6.5(d)(ii) on the date of declaration;

(e) (i) so long as no Default or Event of Default, in each case, in respect of Sections 8.1(a), 8.1(f) or 8.1(g) shall have occurred and be continuing or shall be caused thereby, Holdings may make Restricted Payments to Sponsor to the extent of Restricted Payments received by Holdings from Company pursuant to Sections 6.5(c)(ii) and (ii) so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby, Holdings

may make Restricted Payments (x) as described in Section 6.5(c)(iv) and (y) in respect of Indebtedness permitted by Section 6.1(m) and in connection with the redemption or replacement of any preferred Capital Stock of Holdings described in Section 6.1(m);

(f) additional Restricted Payments in an aggregate amount not to exceed at any time outstanding $10,000,000 (minus any Investments made pursuant to Section 6.7(l)), if no Default or Event of Default has occurred or is continuing or would result therefrom; provided that any Restricted Payment made pursuant this Section 6.5(f) may not subsequently be characterized as a Restricted Payment made pursuant to any other provision of this Agreement; and

(g) if no Default or Event of Default has occurred or is continuing or would result therefrom, additional Restricted Payments in an aggregate amount not to exceed $25,000,000, which Restricted Payments are funded exclusively by Holdings Equity Proceeds that have not been applied to any other purpose; provided that any Restricted Payment made pursuant this Section 6.5(g) may not subsequently be characterized as a Restricted Payment made pursuant to any other provision of this Agreement.

Restrictions on Subsidiary Distributions. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Company to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or by any other Subsidiary of Company, (b) repay or prepay any Indebtedness owed by such Subsidiary to Company or to any other Subsidiary of Company, (c) make loans or advances to Company or to any other Subsidiary of Company, or (d) transfer any of its property or assets to Company or to any other Subsidiary of Company other than restrictions (i) existing under this Agreement or the Revolving Credit Documents (as in effect on the Closing Date), (ii) in agreements evidencing Indebtedness permitted by Sections 6.1(g) and 6.1(l) that impose restrictions on the property so acquired, (iii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, Joint Venture agreements and similar agreements entered into in the ordinary course of business, (iv) restrictions in agreements evidencing Indebtedness secured by Liens permitted by Section 6.2(m) that impose restrictions on the property securing such Indebtedness, (v) customary restrictions on assets that are the subject of an Asset Sale permitted by Section 6.9 or a Capital Lease permitted by Section 6.1(n) and (vi) in agreements evidencing Indebtedness permitted by Section 6.1(h) or 6.1(k), in each case, so long as such restrictions are not more restrictive, taken as a whole, than the restrictions set forth in this Agreement.

Investments. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) Investments by Holdings in Company;

(c) Investments made by Company or any of its Subsidiaries in Subsidiary Guarantors which are wholly-owned Subsidiaries of Company;

(d) Investments received by Company or any of its Subsidiaries in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers or suppliers of such Person, in each case in the ordinary course of business;

(e) accounts receivable arising, and trade credit granted, in the ordinary course of business of Company and its Subsidiaries, and any Securities received by Company or any of its Subsidiaries in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss, and any prepayments and other credits to suppliers made in the ordinary course of business;

(f) intercompany loans to the extent permitted under Section 6.1(b);

(g) Consolidated Capital Expenditures by Company or any of its Subsidiaries permitted by Section 6.8(b) of the Revolving Credit Facility;

(h) loans and advances by Company or any of its Subsidiaries to employees of Company and its Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed $2,000,000 at any time outstanding;

(i) Investments by Company or any of its Subsidiaries made in connection with Permitted Acquisitions permitted pursuant to Section 6.9(d);

(j) Investments by Company or any of its Subsidiaries constituting non-Cash consideration received by Company and its Subsidiaries in connection with permitted Asset Sales pursuant to subsection 6.9(c);

(k) Company and its Subsidiaries may continue to own the Investments owned by them as of the Closing Date and described in Schedule 6.7;

(l) other Investments by Company or any of its Subsidiaries in an aggregate amount not to exceed at any time outstanding $10,000,000 (minus any Restricted Payments

made pursuant to Section 6.5(f)), if no Default or Event of Default has occurred or is continuing or would result therefrom; and

(m) additional Investments by Company or any of its Subsidiaries in an aggregate amount not to exceed the Restricted Payment Amount so long as (i) no Default or Event of Default has occurred or is continuing or shall be caused thereby after giving effect to such Investment and (ii) after giving effect to such Investment, the Company and its Subsidiaries shall have satisfied the Investment Conditions.

Notwithstanding the foregoing, in no event shall any Credit Party make any Investment which results in or facilitates in any manner any Restricted Payment not otherwise permitted under the terms of Section 6.5.

Calculations.

(a) [RESERVED]

(b) [RESERVED]

(c) Certain Calculations.

(i) With respect to any period during which a Permitted Acquisition or an Asset Sale has occurred (each, a "**Subject Transaction**"), for purposes of determining the Leverage Ratio calculation in Section 6.1(k), Consolidated Adjusted EBITDA and the components of Consolidated Fixed Charges, as applicable, shall be calculated with respect to such period on a pro forma basis (including pro forma adjustments arising out of events which are directly attributable to a specific transaction, are factually supportable and are expected to have a continuing impact, in each case determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Securities Act and as interpreted by the staff of the Securities and Exchange Commission, which would include cost savings resulting from head count reduction, closure of Facilities and similar restructuring charges, which pro forma adjustments shall be certified by the chief financial officer of Company) using the historical audited financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of Holdings and its Subsidiaries which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period.

(ii) With respect to any period commencing prior to the Closing Date, Consolidated Adjusted EBITDA shall be calculated with respect to the portion of such period prior to the Closing Date based on the historical Consolidated Adjusted EBITDA of the Company during such time, Consolidated Capital Expenditures shall be calculated with respect to the portion of such period prior to the Closing Date based on the historical Consolidated Capital Expenditures of the Company during such time, and the other components of Consolidated Fixed Charges (other than Consolidated Interest Expense) shall be calculated with respect to the portion of such period prior to the Closing Date on a pro forma basis as if the Closing Date occurred on the first day of such period.

(iii) With respect to any period commencing prior to the Closing Date, Consolidated Interest Expense shall be calculated with respect to the portion of such period prior to the Closing Date on a pro forma basis as if the Closing Date occurred on the first day of such period (and assuming that the Indebtedness incurred on the Closing Date was incurred on the first day of such period and, such Indebtedness bears interest during the portion of such period prior to the Closing Date at the weighted average of the interest rates applicable to outstanding Indebtedness during the portion of such period on and after the Closing Date and that no Indebtedness was repaid during the portion of such period prior to the Closing Date).

Fundamental Changes; Asset Dispositions; Acquisitions. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise the business, or all or substantially all of the property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Holdings may be merged with or into Company or with or into any wholly-owned Guarantor Subsidiary of Company, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any wholly-owned Guarantor Subsidiary of Company; provided, in the case of such a merger, Company or such wholly-owned Guarantor Subsidiary of Company, as applicable shall be the continuing or surviving Person;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non-Cash proceeds consisting of notes or other debt Securities and valued at fair market value in the case of other non-Cash proceeds) (i) do not exceed $5,000,000 in the aggregate in any calendar year and (ii) when aggregated with the proceeds of all other Asset Sales, do not exceed $15,000,000 in the aggregate from the Closing Date to the date of determination; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (and in respect of a transaction of greater than $2,500,000, as determined in good faith by the board of directors of Company (or similar governing body)), (2) no less than 80% thereof shall be paid in Cash, and (3) the Net Asset Sale Proceeds thereof shall be applied as required by Section 2.13(a);

(d) Permitted Acquisitions, the consideration for which constitutes either (i) common Capital Stock of Holdings or (ii) (x) no more than $20,000,000 in the aggregate in any calendar year unless (and subject to clause (y) below) before and after giving effect to any such Permitted Acquisitions the Fixed Charge Coverage

Ratio is at least 1.0 to 1.0 for the four Fiscal Quarter period most recently ended, calculated to give effect to such Permitted Acquisition in accordance with Section 6.8(c) as if such Permitted Acquisition occurred on the first day of such four Fiscal Quarter period, as demonstrated in a Fixed Charge Coverage Compliance Certificate delivered to the Administrative Agent prior to such Permitted Acquisition, and (y) no more than $60,000,000 in the aggregate from the Closing Date;

(e) Investments made in accordance with Section 6.7; and

(f) sale and leaseback transactions permitted pursuant to Section 6.3.

Disposal of Subsidiary Interests. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to (a) directly or indirectly issue, sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law or (b) permit any of its Subsidiaries directly or indirectly to issue, sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except (i) Company may issue Capital Stock to Holdings, (ii) Subsidiaries may issue Capital Stock to Company or to a Guarantor Subsidiary of Company (subject to the restrictions on such disposition otherwise imposed under Section 6.9) or to qualify directors if required by applicable law and (iii) Company or any Subsidiary may sell or otherwise dispose of the Capital Stock of its Subsidiaries in an Asset Sale permitted by Section 6.9.

Fiscal Year. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, change its Fiscal Year-end from December 31;provided, that the Fiscal Year-end of Holdings and its Subsidiaries may be changed to the end of any Fiscal Quarter with the prior written consent of, and following receipt of any information requested by,

Administrative Agent (including, without limitation, reconciliation statements for the immediately preceding three years described in Section 5.1(e)).

Transactions with Shareholders and Affiliates. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service or the making of any loan) with any holder of 10% or more of any class of Capital Stock of Holdings or any of its Subsidiaries or with any Affiliate of Holdings or of any such holder, on terms that are less favorable to Holdings or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided, the foregoing restriction shall not apply to (a) any transaction expressly permitted under this Agreement; (b) reasonable and customary fees paid to, and customary indemnification of, members of the board of directors (or similar governing body) of Holdings and its Subsidiaries; (c) compensation arrangements for officers and other employees of Holdings and its Subsidiaries entered into in the ordinary course of business; (d) transactions described in Schedule 6.12; and (e) any transaction between Credit Parties.

Conduct of Business. From and after the Closing Date, each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by Company on the Closing Date and similar or related businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

Permitted Activities of Holdings. Holdings shall not (a) incur, directly or indirectly, any Indebtedness other than the Indebtedness (i) under the Credit Documents, (ii) under the Revolving Credit Documents and (iii) permitted by Section 6.1(m); (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens created under the Collateral Documents to which it is a party; (c) engage in any business or activity or own any assets other than (i) holding 100% of the Capital Stock of Company; (ii) performing its obligations and activities incidental thereto under the Credit Documents, and to the extent not inconsistent therewith, the Revolving Credit Documents; (iii) making Restricted Payments to the extent permitted by Section 6.5 of this Agreement and Section 6.5 of the Revolving Credit Facility; (iv) making Investments to the extent permitted by Section 6.7 of this Agreement and Section 6.7 of the Revolving Credit Facility; (v) issuances of its Capital Stock; (vi) conducting activities arising by virtue of its status as a public company, including without limitation, compliance with its reporting obligations and other requirements applicable to public companies; and (vii) retaining Cash in a deposit account subject to a Blocked Account Agreement in the amount of any Restricted Payments received from the Company pursuant to Section 6.5(d)(i); (d) consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person; (e) sell or otherwise dispose of any Capital Stock of any of its Subsidiaries; (f) create or acquire any Subsidiary or make or own any Investment in any Person other than Company; or (g) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

Amendments or Waivers of Certain Agreements.

(a) Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, terminate or agree to any amendment, restatement, supplement or other modification to, or waiver of, any of its rights under any Revolving Credit Document, any Organizational Document or the Management Services Agreement, or make any payment consistent with an amendment thereof or change thereto (which amendment or other modification, in the case of (i) an Organizational Document or any Revolving Credit Document, is adverse in any material respect to the rights or interests of the Lenders (provided that with respect to any termination, amendment, restatement, supplement or other modification to, or waiver of any Revolving Loan Document, none of the following amendments shall be deemed adverse for purposes of this clause (i): (A) any waiver of any default or event of default or any other waiver or amendment permitting or increasing (or having the effect of permitting or increasing) borrowing availability under the Borrowing Base (without increasing the Revolving Loan Commitments (as defined in the Revolving Credit Facility)), (B) payment of customary fees in connection with any waiver or amendment, or (C) any amendment implementing incremental or additional loans and/or commitments under the Revolving Loan Documents to the extent the Indebtedness in respect thereof is permitted under Section 6.1) and (ii) the Management Services Agreement, involves the imposition of additional fees or any increase in fees payable thereunder (other than as set forth in this Section 6.15) or is adverse in any respect to the rights or interests of the Lenders), without in each case obtaining the prior written consent of Requisite Lenders to such amendment, restatement, supplement or other modification or waiver. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, amend or otherwise change the terms of any Indebtedness permitted to be incurred under Section 6.1 which is subordinated to the Obligations, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on or fees in respect of such Indebtedness, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions thereof (or of any guaranty thereof), or change any collateral therefor (other than to release such collateral), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Indebtedness (or a trustee or other representative on their behalf) which would be adverse to Holdings or Company, any of their Subsidiaries, or Lenders. Notwithstanding the foregoing, this Section 6.15 shall not apply to any amendment to the Management Services Agreement, or the termination thereof, executed or made in connection with a Qualifying IPO; provided, that the payments made in connection therewith shall not exceed the Qualifying IPO Payment.

Limitation on Payments Relating to Other Debt(a) . Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, make or offer to make, any prepayment, repurchase or redemption of, or otherwise defease, the Indebtedness permitted to be incurred under Section 6.1(k) (such Indebtedness, "**Other Debt**"), or segregate funds for any such prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a

"**Derivatives Counterparty**") obligating Holdings, the Company or any Subsidiary to make payments to such Derivatives Counterparty as a result of any change in market value of Other Debt, other than (a) any prepayment, repurchase or redemption of Other Debt pursuant to a Permitted Refinancing thereof and (b) prepayments, repurchases or redemptions of Other Debt in an aggregate amount not to exceed the Restricted Payment Amount so long as (i) no Default or Event of Default has occurred or is continuing or shall be caused thereby after giving effect to such payment and (ii) after giving effect to such payment, the Company and its Subsidiaries shall have satisfied the Investment Conditions. Notwithstanding anything to the contrary contained in this Agreement, the Credit Parties are permitted to redeem the Senior Notes pursuant to the Qualifying Senior Notes Redemption. Notwithstanding anything to the contrary contained in this Agreement, Holdings is permitted to prepay, repurchase or redeem Other Debt utilizing Holdings Equity Proceeds that have not been applied to any other purpose, if no Default or Event of Default has occurred or is continuing or would result therefrom; provided that any prepayment, repurchase or redemption or Other Debt pursuant to this sentence may not subsequently be characterized as having been made pursuant to any other provision of this Agreement.

SECTION 7. GUARANTY

Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "**Guaranteed Obligations**").

Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the"**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions

of state law; provided, solely for purposes of calculating the"**Fair Share Contribution Amount**" with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Company's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Company for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence and during the continuance of an Event of Default notwithstanding the existence of any dispute

between Company and any Beneficiary with respect to the existence and continuance of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Company and the obligations of any other guarantor (including any other Guarantor) of the obligations of Company, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Company or any of such other guarantors and whether or not Company is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof

or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Company or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce an agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Holdings or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Beneficiary in favor of Company or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Company or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more

burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Company and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations shall have been indefeasibly paid in full and the Term Loan Commitments shall have terminated, each Guarantor hereby waives and agrees not to assert any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Company with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Company, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full and the Term Loan Commitments shall have terminated, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Company or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Company, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of

Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

Subordination of Other Obligations. Any Indebtedness of Company or any Guarantor now or hereafter held by any Guarantor (the"**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full and the Term Loan Commitments shall have terminated. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

Authority of Guarantors or Company. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Company or the officers, directors or any agents acting or purporting to act on behalf of any of them.

Financial Condition of Company. Any Credit Extension may be made to Company or continued from time to time without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such grant or continuation, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Company. Each Guarantor has adequate means to obtain information from Company on a continuing basis concerning the financial condition of Company and its ability to perform its obligations under the Credit Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Company and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Company now known or hereafter known by any Beneficiary.

Bankruptcy, etc. So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Company or any other

Guarantor or by any defense which Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Company of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Company, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor (other than Holdings) or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

SECTION 8. EVENTS OF DEFAULT

Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Company to pay (i) when due any principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise or (ii) any interest on any Loan or any fee or any other amount due hereunder within five (5) days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of $5,000,000 or more or with an aggregate principal amount of $10,000,000 or more, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Credit Party with respect to any other term (other than Section 6.8(a) of the Revolving Credit Facility) of (1) one or more items of such Indebtedness or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, or any other event or circumstance shall occur, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default or event or circumstance is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be, or to require an offer to purchase or redeem such Indebtedness be made (other than any due on sale provision with respect to any Indebtedness permitted to be repaid hereunder and which is so repaid in full); or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Sections 2.6, 2.14, 5.1(f), 5.1(g), 5.2(i), 5.14, 5.15 or 6; or

(d) Breach of Representations, etc. Any representation, warranty or certification made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an officer of such Credit Party becoming aware of such default or (ii) receipt by Company of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Holdings or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Holdings or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in

effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Holdings or any of its Subsidiaries, or over all or a substantial part of its

property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Holdings or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Holdings or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc.. (i) Holdings or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Holdings or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Holdings or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Holdings or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in this Section 8.1(g) or in Section 8.1(f) above; or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $5,000,000 or (ii) in the aggregate at any time an amount in excess of $10,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Holdings or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days (or in any event later than five (5) days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the dissolution or split up of such Credit Party; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events or (ii) there shall exists any fact or circumstance that results or reasonably could be expected to result in the imposition of a Lien or security interest with respect to any Employee Benefit Plan under Section 412(n) of the Internal Revenue Code or under ERISA, in either case involving or that might reasonably be expected to involve in any individual case an amount in excess of $5,000,000 or in the aggregate at any time an amount in excess of $10,000,000; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations or upon the release of such Guaranty with respect to a Subsidiary of the Company in connection with an Asset Sale permitted hereby, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party;

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, upon notice to Company by Administrative Agent (which notice shall be given by Administrative Agent upon the request of the Requisite Lenders), (A) the Term Loan Commitments, if any, of each Lender having such Term Loan Commitments shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (I) the unpaid principal amount of and accrued interest on the Loans and (II) all other Obligations; and (C) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents.

SECTION 9. AGENTS

Appointment of Agents. Credit Suisse is hereby appointed Administrative Agent and Collateral Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Administrative Agent and Collateral Agent to act as its agent in each such capacity in accordance with the terms hereof and the other Credit Documents. Credit Suisse is hereby appointed Syndication Agent hereunder, and each Lender hereby authorizes Syndication Agent to act as its agent in accordance with the terms hereof and the other Credit Documents. Credit Suisse is hereby appointed Documentation Agent hereunder, and each Lender hereby authorizes Documentation Agent to act as its agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries.

Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Lender irrevocably authorizes each of the Administrative Agent and the Collateral Agent to execute and deliver the Intercreditor Agreement and agrees to be bound by the provisions therein. Each Agent may perform any and all of their duties and exercise their rights and powers by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates, and the respective directors, officers, employees, agents and advisors of such Agent and such Agent's Affiliates. The exculpatory provisions of the Credit Documents shall apply to any such sub-agent and to the Affiliates, directors, officers, employees, agents and advisors of such 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 Agent. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

General Immunity.

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

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by

such Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5). Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon.

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

Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the

Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

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

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

Successor Administrative Agent. Administrative Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and Company. Upon any such notice of resignation, Requisite Lenders shall have the right, upon five (5) Business Days' notice to Company, to appoint a successor Administrative Agent. If no successor shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within thirty (30) days after the resigning Administrative Agent gives notice of its resignation, then the resigning Administrative Agent may, on behalf of Agents and Lenders, appoint a successor Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) execute and deliver to such successor Administrative Agent such

amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions

taken or omitted to be taken by it while it was Administrative Agent hereunder.

Collateral Documents and Guaranty.

(a) Agents under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from Lenders, Administrative Agent or Collateral Agent, as applicable may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, Company, Administrative Agent, Collateral Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale.

SECTION 10. MISCELLANEOUS

Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Credit Party, Collateral Agent,

Administrative Agent, Syndication Agent or Documentation Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States certified or registered mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent. As agreed to among Holdings, the Borrower, the Administrative Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower hereby agrees, unless directed otherwise by the Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to the Borrower, that it will, or will cause its Subsidiaries to, provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Credit Documents or to the Lenders under Article 5, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date thereof or (ii) provides notice of any Default or Event of Default under this Agreement or any other Credit Document (all such non-excluded communications being referred to herein collectively as "***Communications***"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format acceptable to the Administrative Agent to an electronic mail address as directed by the Administrative Agent. In addition, the Borrower agrees, and agrees to cause its Subsidiaries, to continue to provide the Communications to the Administrative Agent or the Lenders, as the case may be, in the manner specified in the Credit Documents but only to the extent requested by the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the "***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 (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 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 confidential information, they shall be treated as set forth in Section 10.17); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available

through a portion of the Platform designated as "Public Investor;" and (z) the Administrative Agent 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 marked as "Public Investor." Notwithstanding the foregoing, the following Borrower Materials shall be marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Credit Documents and (2) notification of changes in the terms of the Credit Documents.

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Communications that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY CREDIT PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY CREDIT PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A

COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Credit Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

Expenses. Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to pay promptly (a) all the actual costs and expenses incurred by Arranger and Administrative Agent and Collateral Agent in connection with the preparation of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrower and the other Credit Parties; (c) the reasonable fees, expenses and disbursements of counsel to Arranger and Administrative Agent and Collateral Agent in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower; (d) all the actual costs and expenses of creating and perfecting Liens in favor of Collateral Agent, for the benefit of Lenders pursuant hereto, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and Arranger and of counsel providing any opinions that Arranger, any Agent or Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the actual and reasonable out-of-pocket costs and fees, expenses and disbursements of any auditors, accountants, consultants or appraisers retained by Administrative Agent or Collateral Agent in connection with the Credit Documents and identified to Borrower prior to their retention; (f) all the actual costs and expenses (including the fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable out-of-pocket costs and expenses incurred by Arranger and each Agent in connection with the syndication of the Loans and Commitments and the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by Arranger, each and any Agent or each and any Lender in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings.

Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, Arranger, each Agent, each Lender and the officers, partners, directors, trustees, employees, agents (including advisors) and Affiliates of Arranger, each Agent, each Lender (each, an "**Indemnitee**"), from and against any and all Indemnified Liabilities; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee as determined by a final non-appealable judgment of a court of

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competent jurisdiction. As used herein, "**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, actions, judgments, suits, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)).

(b) To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(c) To the extent permitted by applicable law, each of Holdings and Company, and its Subsidiaries, shall not assert, and each of Holdings and Company, and its Subsidiaries, hereby waives, any claim against Lenders, Agents and Arranger, and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or referred to herein, the transactions contemplated hereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each of Holdings and Company, and its Subsidiaries, hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default each Agent, each Lender and each of their respective Affiliates is hereby authorized by each Credit Party at any time or from time to time, without notice to any Credit

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Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Agent, Lender or Affiliate to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Agent, Lender or Affiliate hereunder, and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, or with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured.

Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to Section 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Requisite Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.9) or any fee payable hereunder;

(iv) extend the time for payment of any such interest or fees;

(v) reduce or forgive the principal amount of any Loan;

(vi) amend, modify, terminate or waive any provision of this Section 10.5(b), Section 10.5(c) or Section 2.16 hereof, or Section 7.2 of the Pledge and Security Agreement;

(vii) amend the definition of "**Requisite Lenders**" or "**Pro Rata Share**";

(viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents;

(ix) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document; or

(x) modify the term "Interest Period" so as to permit intervals in excess of six (6) months.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall:

(i) increase any Term Loan Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Term Loan Commitment of any Lender; or

(ii) amend, modify, terminate or waive any provision of Section 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the

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

(b) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and, except as provided in Section 10.6(e), no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 10.6(f). In the case of a Related Lender Assignment described in Section 10.6(e) that is not reflected in the Register, the assigning Lender shall maintain a comparable register. Prior to such recordation, all amounts owed with respect to the applicable Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Commitment or Loans owing to it or other Obligation (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (i) of the definition of the term of "Eligible Assignee" (a "**Related Lender Assignment**") upon the giving of notice to Borrower and Administrative Agent and, for any assignment of a Term Loan Commitment, the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed);

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term of "Eligible Assignee" (other than a Person described in the foregoing subclause (i)) and (except in the case of assignments made by or to Credit Suisse) consented to by Borrower and Administrative Agent (such consent (x) not to be unreasonably withheld or delayed or, (y) in the case of Borrower, shall be deemed to have been provided to

any such assignment unless the Borrower shall have objected thereto by written notice to the Administrative Agent within fifteen (15) days after having received notice of such assignment, or (z) in the case of

Borrower, not to be required at any time during syndication of the Loans to persons identified by the Administrative Agent to the Borrower on or prior to the Closing Date or at any time an Event of Default under Sections 8.1(a), 8.1(f) or 8.1(g) shall have occurred and then be continuing; provided, further each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount as may be agreed to by Borrower and Administrative Agent or as shall constitute the aggregate amount of the Term Loan Commitments and Term Loans of the assigning Lender) with respect to the assignment of the Term Loan Commitments and Term Loans; and

(iii) to the Borrower pursuant to a Permitted Loan Purchase upon the giving of notice to Administrative Agent. Any Loans acquired by Borrower shall be deemed cancelled and retired immediately upon closing of such Permitted Loan Purchase. It is confirmed and acknowledged that, upon such cancellation or retirement of Loans pursuant to a Permitted Loan Purchase, the Loans so cancelled or retired shall be deemed not to be outstanding and to have no principal amount for any purposes under this Agreement.

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent (i) an Assignment Agreement (A) via an electronic settlement system acceptable to Administrative Agent (which initially shall be ClearPar, LLC), or (B) manually together with a processing and recordation fee of $3,500, and (ii) such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to Section 2.19(c); provided, however, that should a Lender or assignee party to a Related Lender Assignment deliver an Assignment Agreement to the Administrative Agent for recording, such Lender or assignee shall provide the relevant administration details and applicable tax forms with such Assignment Agreement. The Assignment Agreement executed in connection with any Permitted Loan Purchase shall include the following representations:

Each party to this Assignment represents and warrants to each Agent and each Lender that it has made its own independent investigation of the facts and circumstances surrounding this Assignment and the transactions contemplated hereby, and has not relied in any way on any statement, advice or recommendation of any Agent or Lender in connection herewith or therewith. No Agent shall have any duty or responsibility to disclose information to the parties to this Assignment in connection herewith and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to parties to this Assignment relating to any of the foregoing.

(e) Related Lender Assignments. Notwithstanding anything contained in this Section 10.6 to the contrary, a Lender may effect a Related Lender Assignment with respect to Term Loans held by it without delivering an Assignment Agreement to Administrative Agent or to Company and without payment of the assignment fee referred to in Section 10.6(d); provided, that, if and when an Assignment Agreement is delivered to Administrative Agent, it is delivered via ClearPar, LLC, or such other electronic settlement system acceptable to the Administrative Agent; provided, however, that (i) Company, Administrative Agent and the other Lenders shall continue to deal solely and directly with such assigning Lender in connection with such Lender’s rights and obligations under this Agreement until such Assignment Agreement has been delivered to Administrative Agent and recorded in the Register and (ii) anything contained herein to the contrary notwithstanding, if such Related Lender Assignment is to a Person that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code), such assignee party to such Related Lender Assignment shall comply with Section 2.19(c) hereof as if such assignee party had delivered an Assignment Agreement to Administrative Agent on the effective date of such Related Lender Assignment. The failure of such assigning Lender to deliver an Assignment Agreement to Administrative Agent shall not affect the legality, validity or binding effect of such assignment.

(f) Notice of Assignment. Upon its receipt of a duly executed and completed Assignment Agreement, together with the processing and recordation fee referred to in Section 10.6(d) (and any forms, certificates or other evidence required by this Agreement in connection therewith), Administrative Agent shall record the information contained in such Assignment Agreement in the Register and shall maintain a copy of such Assignment Agreement.

(g) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement or Term Loan Joinder Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(h) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the “Effective Date” specified in the applicable Assignment Agreement: (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any

rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect the Commitment of such assignee and any Term Loan Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation or deliver a lost note affidavit, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Term Loan Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(i) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than to a natural person, Holdings, any of its Subsidiaries or any of its Affiliates) in all or any part of its Commitments, Loans or in any other Obligation. The holder of any such participation shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant’s

participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating. Borrower agrees that each participant shall be entitled to the benefits of Sections 2.17(c), 2.18 and 2.19 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (i) a participant shall not be entitled to receive any greater payment under Section 2.18 or 2.19 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 Borrower's prior written consent and (ii) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.19 unless Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower, to comply with Section 2.19 as though it were a Lender. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.16 as though it were a Lender.

(j) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, (i) any Lender may assign and/or pledge all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Company and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

Independence of Covenants. All covenants hereunder 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 would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.18(c), 2.19, 2.20, 10.2, 10.3 and 10.4 and the agreements of Lenders set forth in Sections 2.17, 9.3(b) and 9.6 shall survive the payment of the Loans and the termination hereof.

No Waiver; Remedies Cumulative. No failure or delay on the part of Arranger, any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Arranger, each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any

bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Severability. In case any provision in or obligation hereunder or any Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

CONSENT TO JURISDICTION. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY CREDIT PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (b) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE

CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (d) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (c) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY

SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (e) AGREES AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/COMPANY RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, WHICH EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Confidentiality. Each Lender shall hold all non-public information regarding Holdings and its Subsidiaries and their businesses identified as such by Borrower and obtained by such Lender pursuant to the requirements hereof in accordance with such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Holdings that, in any event, a Lender may make disclosures: (i) to Affiliates of such Lender and to their agents and advisors (and to other persons authorized by a Lender or Agent to

organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17); (ii) reasonably required by any bona fide or potential pledgee, assignee, transferee or participant in connection with the contemplated pledge, assignment, transfer or participation by such Lender of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) in Hedge Agreements (provided, such counterparties and advisors are advised of and agree to be bound by the provisions of this Section 10.17); (iii) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Credit Parties received by it from any of the Agents or any Lender; and (iv) required or requested by any governmental agency or representative thereof or by The National Association of Insurance Commissioners (and any successor thereto) or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Borrower of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information; provided, further, that in no event shall any Lender be obligated or required to return any materials furnished by Holdings, Company or any of its Subsidiaries. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitations of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates.

Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Company

to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower.

Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each Credit Party, the Administrative Agent, the Collateral Agent and the Lenders.

APPENDIX A-1
TO CREDIT AND GUARANTY AGREEMENT

[Reserved]

Notice Addresses

DOUGLAS DYNAMICS, INC.
DOUGLAS DYNAMICS FINANCE COMPANY
DOUGLAS DYNAMICS, L.L.C.
FISHER, LLC

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

CREDIT SUISSE AG,
acting through its Cayman Islands Branch,
as Administrative Agent, Collateral Agent,
Syndication Agent, Documentation Agent and a Lender

Principal Office of Administrative Agent, Collateral Agent,
Syndication Agent and Documentation Agent:

Eleven Madison Avenue, OMA-2
New York, NY 10010
Attention: Loan Services Manager
Tel: 212-538-3380
Fax: 212-325-8304

Exhibit B

Amendment to ABL Credit Agreement

See Exhibit 10.3 to Amendment No. 5 to the Registration Statement on Form S-1 of Douglas Dynamics, Inc. (File No. 333-164590).

Exhibit C

Intercreditor Amendment

See attached.

Exhibit C

Intercreditor Amendment

AMENDMENT NO. 1 TO INTERCREDITOR AGREEMENT

This AMENDMENT NO. 1 TO INTERCREDITOR AGREEMENT (this "Amendment"), dated as of April [   ], 2010, is made and entered into among Douglas Dynamics, L.L.C., a Delaware limited liability company (the "Borrower"), Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance"), Fisher, LLC, as Delaware limited liability company ("Fisher"), Douglas Dynamics, Inc., a Delaware corporation ("Holdings"), Credit Suisse AG, Cayman Islands Branch ("Credit Suisse"), in its capacity as administrative agent under the ABL Loan Documents (as defined in the Intercreditor Agreement referred to below) (in such capacity, the "ABL Administrative Agent"), JPMorgan Chase Bank, N.A, in its capacity as collateral agent under the ABL Loan Documents (in such capacity, the "ABL Collateral Agent"), Credit Suisse, in its capacities as administrative agent (in such capacity, the "Term Administrative Agent" and, together with the ABL Administrative Agent, the "Administrative Agents") and collateral agent (in such capacity, the "Term Collateral Agent") under the Term Loan Documents (as defined in the Intercreditor Agreement referred to below).

RECITALS

A. The Borrower, DD Finance, Fisher, Holdings, the ABL Administrative Agent, the ABL Collateral Agent, the Term Administrative Agent and the Term Collateral Agent entered into that certain Intercreditor Agreement dated as of May 21, 2007 (the "Intercreditor Agreement"; capitalized terms used but not defined herein having the meanings set forth therein).

B. Concurrently herewith, the Term Credit Agreement and the ABL Credit Agreement have been amended to permit the making of additional term loans

under the Term Credit Agreement in the principal amount of $40,000,000 and reflect certain other changes.

C. The ABL Required Lenders and the Term Required Lenders have given their prior written consent to the execution of this Amendment.

D. The Borrower, the Term Administrative Agent, the Term Collateral Agent, the ABL Administrative Agent and the ABL Collateral Agent desire to amend the Intercreditor Agreement as set forth below on and subject to the terms of this Amendment.

AGREEMENT

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

1. Amendment to Intercreditor Agreement.

(a) The definition of "Maximum Term Principal Amount" in Section 1.1 of the Intercreditor Agreement is hereby amendedin its entirety by deleting the existing definition and replacing it with the following:

"Maximum Term Principal Amount" shall mean, at any time, (i) $125,000,000, less (ii) the aggregate principal amount of permanent repayments or prepayments of indebtedness under the Term Credit Agreement, other than any such reduction, repayment or prepayment made in

connection with a Refinancing, plus (iii) for the avoidance of doubt and without duplication, the aggregate principal amount of any interest that has been capitalized under the Term Credit Agreement..

(b) The definition of "Maximum ABL Principal Amount" in Section 1.1 of the Intercreditor Agreement is hereby amended in its entirety by deleting the existing definition and replacing it with the following:

"Maximum ABL Principal Amount" shall mean, at any time, (i) $60,000,000, less (ii) the aggregate permanent reductions in the ABL Loan Commitments other than any such reduction, repayment or prepayment made in connection with a Refinancing, plus (iii) for the avoidance of doubt and without duplication, the aggregate principal amount of any interest that has been capitalized under the ABL Credit Agreement.

2. Effectiveness of Amendment.. This Amendment shall be effective as of the first date (the "Amendment Effective Date") on which all of the following conditions precedent have been satisfied:

(c) The Administrative Agents shall have received counterparts of this Amendment executed by the Term Administrative Agent, the Term Collateral Agent, the ABL Administrative Agent, the ABL Collateral Agent, the Borrower, DD Finance, Fisher and Holdings.

(d) The Administrative Agents shall have received an executed copy of Amendment No. 2 to Credit and Guaranty Agreement, dated as of the date hereof (the "Term Amendment"), among the Borrower and each of the lenders party thereto and the Term Amendment shall be in full force and effect.

(e) The Administrative Agents shall have received an executed copy of Amendment No. 1 to Credit and Guaranty Agreement, dated as of the date hereof (the "ABL Amendment"), among the Borrower and each of the lenders party thereto and the ABL Amendment shall be in full force and effect.

3. Miscellaneous. **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).** This Amendment may be executed in one or more duplicate counterparts and when signed by all of the parties listed below shall constitute a single binding agreement. Except for the amendments set forth in Section 1 hereof, all of the provisions of the Intercreditor Agreement shall remain in full force and effect. The foregoing amendments shall be strictly construed in accordance with the express terms thereof. This Amendment shall be deemed a "Credit Document" as defined in the Credit Agreement.

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

CREDIT PARTIES:

DOUGLAS DYNAMICS, L.L.C.

By: ____________________
Name:
Title:

DOUGLAS DYNAMICS, INC.

By: ____________________
Name:
Title:

DOUGLAS DYNAMICS FINANCE COMPANY

By: ____________________
Name:
Title:

FISHER, LLC,

By: ____________________
Name:
Title:

ABL ADMINISTRATIVE AGENT:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as ABL Administrative Agent

By:
Name:
Title:

By:
Name:
Title:

ABL COLLATERAL AGENT:

JPMORGAN CHASE, N.A.,
as ABL Collateral Agent

By:
Name:
Title:

TERM ADMINISTRATIVE AGENT AND TERM COLLATERAL AGENT:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Term Administrative Agent and Term Collateral Agent

By:
Name:
Title:

By:
Name:
Title:

Exhibit 10.2

EXHIBIT A-1

FUNDING NOTICE

Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and Holdings, each a "Guarantor" and collectively the "Guarantors"), the banks and financial institutions listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Pursuant to Section 2.1(b) of the Credit Agreement, Borrower desires that Lenders make the following Credit Extension[s] to Company in accordance with the applicable terms and conditions of the Credit Agreement on [mm/dd/yyyy] (the "Credit Date"):

Term Loans

·	Base Rate Loans:	$[, ,]
·	Eurodollar Rate Loans, with an Initial Interest Period of Month(s):	$ [, ,]

Borrower hereby certifies that:

(i) the Credit Extension[s] requested herein [comply] [complies] with the provisions of Section 2.1; and

(ii) the conditions specified in Section 3.1 have been satisfied on and as of the Credit Date.

Date: [mm/dd/yyyy]

DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title:

EXHIBIT A-2

CONVERSION/CONTINUATION NOTICE

Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and Holdings, each a "Guarantor" and collectively the "Guarantors"), the banks and financial institutions listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Pursuant to Section 2.8 of the Credit Agreement, Borrower desires to convert or to continue the following Term Loans, each such conversion and/or continuation to be effective as of [mm/dd/yyyy]:

$[, ,]	Eurodollar Rate Loans to be continued with Interest Period of month(s)
$[, ,]	Base Rate Loans to be converted to Eurodollar Rate Loans with Interest Period of month(s)
$[, ,]	Eurodollar Rate Loans to be converted to Base Rate Loans

Except in the case of a conversion to Base Rate Loans, Borrower hereby certifies that as of the date hereof, no event has occurred and is continuing or would result from the consummation of the conversion and/or continuation contemplated hereby that would constitute an Event of Default or a Default.

Date: [mm/dd/yyyy]

DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title:

EXHIBIT B

TERM LOAN NOTE

$[Lender's Term Loan Commitment]
[ ], 2007 New York, New York

FOR VALUE RECEIVED, the undersigned (the "Borrower"), promises to pay [NAME OF LENDER] ("Payee") or its registered assigns, on or before the Maturity Date, the lesser of (a) [AMOUNT] DOLLARS ($[, ,]) and (b) the unpaid principal amount of all advances made by Payee to the Borrower as Term Loans under the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation, Douglas Dynamics, L.L.C., a Delaware limited liability company, Fisher, LLC, a Delaware limited liability company, Douglas Dynamics Finance Company, a Delaware corporation, the banks and financial institutions listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Lenders (in such capacity, "Collateral Agent").

This Term Loan Note (this "Note") is one of the "Term Loan Notes" issued pursuant to and entitled to the benefits of the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loans evidenced hereby were made and are to be repaid.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of Administrative Agent or at such other place as shall be designated in writing for such purpose in accordance with the terms of the Credit Agreement. Unless and until an Assignment Agreement effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by Administrative Agent and recorded in the Register, the Borrower, each Agent and Lenders shall be entitled to deem and treat Payee as the owner and holder of this Note and the obligations evidenced hereby. Payee hereby agrees, by its acceptance hereof, that before disposing of this Note or any part hereof it will make a notation hereon of all principal payments previously made hereunder and of the date to which interest hereon has been paid; provided that the failure to make a notation of any payment made on this Note shall not limit or otherwise affect the obligations of the Borrower hereunder with respect to payments of principal of or interest on this Note.

This Note is subject to mandatory prepayment and to prepayment at the option of the Borrower, each as provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision of or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. Whenever in this Note reference is made to Administrative Agent, Payee or the Borrower, such reference shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Note shall be binding upon the Borrower and its successors and assigns, and shall inure to the benefit of Payee and its successors and assigns.

Upon the occurrence of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of the Borrower, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

The Borrower promises to pay all costs and expenses, including reasonable attorneys' fees, all as provided in the Credit Agreement, incurred in the collection and enforcement of this Note. The Borrower and any endorsers of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

[Signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

BORROWER:

DOUGLAS DYNAMICS, L.L.C.

By: ______________________
Name:
Title:

TRANSACTIONS ON
TERM LOAN NOTE

Date	Amount of Loan Made This Date	Amount of Principal Paid This Date	Outstanding Principal Balance This Date	Notation Made By

EXHIBIT C

COMPLIANCE CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am the Chief Financial Officer of Douglas Dynamics, L.L.C. (the "Company" or the "Borrower").

2. I have reviewed the terms of that certain Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), the Company, Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and Holdings, each a "Guarantor" and collectively the "Guarantors") the banks and financial institutions listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Lenders (in such capacity, "Collateral Agent"), and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Holdings and its Subsidiaries during the accounting period covered by the attached financial statements.

3. The examination described in paragraph 2 above did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes an Event of Default or Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth in a separate attachment, if any, to this Certificate, describing in detail, the nature of the condition or event, the period during which it has existed and the action which the Company or any of its Subsidiaries has taken, is taking, or proposes to take with respect to each such condition or event.

The foregoing certifications, together with the computations set forth in the Annex A hereto and made a part hereof and the financial statements delivered with this Certificate in support hereof, are made and delivered [mm/dd/yyyy] pursuant to Section 5.1(d) or 5.1(i) of the Credit Agreement or in connection with the making of a Permitted Acquisition under the Credit Agreement.

DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title:

ANNEX A TO
COMPLIANCE CERTIFICATE

FOR THE FISCAL [QUARTER] [YEAR] ENDING [mm/dd/yyyy]

This Annex A is attached to and made part of a Compliance Certificate dated as of [mm/dd/yyyy] and pertains to the period [mm/dd/yyyy] to [mm/dd/yyyy]. Subsection references herein relate to subsections of the Credit Agreement.

1. Consolidated Adjusted EBITDA:		(i) + (ii)(1) - (iii) (2)=		$	[, ,]
	(i)	Consolidated Net Income:		$	[, ,]
	(ii)	(a)	Consolidated Interest Expense and non-Cash interest expense:	$	[, ,]
		(b)	provisions for taxes based on income:	$	[, ,]
		(c)	total depreciation expense:	$	[, ,]
		(d)	total amortization expense: (3)	$	[, ,]
		(e)	non-cash impairment charges:	$	[, ,]
		(f)	non-cash expenses resulting from the grant of stock and stock options and other compensation to management personnel of the Company and its Subsidiaries pursuant to a written incentive plan or agreement:	$	[, ,]
		(g)	other non-Cash items that are unusual or otherwise non-recurring items:	$	[, ,]
		(h)	expenses for fees under the Management Services Agreement:	$	[, ,]
		(i)	any extraordinary losses and non-recurring charges during any period:(4)	$	[, ,]
		(j)	restructuring charges or reserves:(5)	$	[, ,]
		(k)	any transaction costs incurred in connection with the issuance of Securities or any refinancing transaction, in each case whether or not such transaction is consummated:	$	[, ,]

(1) Without duplication to the extent deducted in the calculation of Consolidated Net Income for such period.

(2) Without duplication.

(3) Including amortization of goodwill, other intangibles, and financing fees and expenses.

(4) Including severance, relocations costs, one-time compensation charges and losses or charges associated with Interest Rate Agreements.

(5) Including costs related to closure of Facilities.

	(1)	any fees and expenses related to any Permitted Acquisitions	$	[, ,]
(iii)	(a)	non-Cash items increasing Consolidated Net Income for such period that are unusual or otherwise non-recurring items:	$	[, ,]
	(b)	cash payments made during such period reducing reserves or liabilities for accruals made in prior periods but only to the extent such reserves or accruals were added back to "Consolidated Adjusted EBITDA" in a prior period pursuant to clauses (ii)(f) or (ii)(g) above:	$	[, ,]
	(c)	Restricted Payments made during such period to Holdings pursuant to Section 6.5(c)(i):	$	[, ,]
2. Consolidated Capital Expenditures:			$	[, ,]
	The aggregate of all expenditures of the Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of the Company and its Subsidiaries. (6)			
		Maximum: (7)	$	[, ,]
3. Consolidated Current Assets:			$	[, ,]
	The total assets of the Company and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.			
4. Consolidated Current Liabilities:			$	[, ,]
	The total liabilities of the Company and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.			
5. Consolidated Fixed Charges: (i) + (ii) + (iii) + (iv) + (v) = (8)			$	[, ,]
	(i)	Consolidated Interest Expense:	$	[, ,]
	(ii)	scheduled payments of principal on Consolidated Total Debt:	$	[, ,]
	(iii)	Consolidated Capital Expenditures: (9)	$	[, ,]

(6) Excluding expenditures constituting the purchase price for Permitted Acquisitions and amounts constituting Net Asset Sale Proceeds and Net Insurance/Condemnation Proceeds which are reinvested in the business of Company and its Subsidiaries in accordance with Section 2.13(a) or Section 2.13(b) of the Credit Agreement, respectively, by the Company and its Subsidiaries during such period.

(7) Maximum for calendar year.

(8) Without duplication.

	(iv)	the portion of taxes based on income actually paid in cash during such period by the Company or any of its Subsidiaries whether for such period or any other period:	$	[, ,]
	(v)	Restricted Payments permitted under Section 6.5(c)(iii) of the Credit Agreement and which are paid in cash during such period:	$	[, ,]
6. Consolidated Interest Expense: (i) - (ii) =			$	[, ,]
	(i)	total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) payable in cash of the Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Company and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements: (10)	$	[, ,]
	(ii)	the aggregate amount of interest income of the Company and its Subsidiaries during such period paid in cash:	$	[, ,]
7. Consolidated Net Income: (i) - (ii) =			$	[, ,]
	(i)	the net income (or loss) of the Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP:	$	[, ,]

(ii)	(a)	the income (or loss) of any Person (other than a Subsidiary of the Company) in which any other Person (other than the Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Company or any of its Subsidiaries by such Person during such period:	$	[, ,]
	(b)	the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Company or is merged into or consolidated with the Company or any of its Subsidiaries or that Person's assets are acquired by the Company or any of its Subsidiaries:	$	[, ,]
	(c)	the income of any Subsidiary of the Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable		

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(9) Other than those financed with secured Indebtedness permitted by Sections 6.1 and 6.2 of the Credit Agreement or made or incurred pursuant to Section 6.8(b)(ii) of the Revolving Credit Facility.

(10) Excluding any amounts referred to in Section 2.10(d) of the Credit Agreement payable on or before the Closing Date and amounts with respect to the termination of Interest Rate Agreements entered into within 90 days of the Closing Date.

		to that Subsidiary:	$	[, ,]
	(d)	any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan:	$	[, ,]
	(e)	to the extent not included in items (a) through (d) above, any net extraordinary gains or net extraordinary losses:	$	[, ,]

8. Consolidated Total Debt:

The aggregate stated balance sheet amount of all Indebtedness of the Company and its Subsidiaries determined on a consolidated basis in accordance with GAAP; provided, that the amount of revolving Indebtedness to be included at the date of determination shall be equal to the average of the balances of such revolving Indebtedness as of the end of each of the prior four calendar quarters: (11)	$	[, ,]

9. Fixed Charge Coverage Ratio: (12) (i)/(ii) =

(i)	Consolidated Adjusted EBITDA for the four-Fiscal Quarter Period then ended:	$	[, ,]
(ii)	Consolidated Fixed Charges for such four-Fiscal Quarter Period:	$	[, ,]
	Actual:	. :1.00	
	Required:(13)	1.00:1.00	

10. Leverage Ratio: (14),(15) (i)/(ii) =

(i)	Consolidated Total Debt less unrestricted Cash and Cash Equivalents of the Company and its Subsidiaries as of such day in excess of $1,000,000:	$	[, ,]
(ii)	Consolidated Adjusted EBITDA for the four-Fiscal Quarter period then ended:	$	[, ,]
	Actual:	. :1.00	
	Required:	. :1.00	

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(11) Except that with respect to the first four calendar quarters after the Closing Date, the amount of revolving Indebtedness to be included shall be based on the average of the quarter end balances from the Closing Date through the date of determination.

(12) Calculated as of the last day of any Fiscal Quarter.

(13) If a Liquidity Event then exists.

(14) Calculated as of the last day of any Fiscal Quarter.

(15) For purposes of determining the unsecured debt basket pursuant to Section 6.1(k).

EXHIBIT D

OPINION OF COUNSEL FOR CREDIT PARTIES

EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Assignment") is dated as of the Effective Date set forth below and is entered into by and between [NAME OF ASSIGNOR] (the "Assignor") and [NAME OF ASSIGNEE] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below, the interest in and to all of the Assignor's rights and obligations under the Credit Agreement and any other documents or instruments delivered pursuant thereto that represents the amount and percentage interest identified below of all of the Assignor's outstanding rights and obligations under the respective facilities identified below (including to the extent included in any such Loans and Letters of Credit) (the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and the Credit Agreement, without representation or warranty by the Assignor.

1. Assignor:

2. Assignee: [and is an Affiliate/Related Fund/Sponsor/Fund affiliated with Sponsor(1)]

3. Borrower(s): Douglas Dynamics, L.L.C.

4. Administrative Agent: Credit Suisse, acting through its Cayman Islands Branch, as the administrative agent under the Credit Agreement

5. Credit Agreement: The Credit and Guaranty Agreement, dated as of May 21, 2007, by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance." and together with Fisher and Holdings, each a "Guarantor" and collectively the "Guarantors") the banks and financial institutions listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Lenders (in such capacity, "Collateral Agent")

(1) Select as applicable.

6. Assigned Term Loan Commitment:

Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans(2)
$	$	%
$	$	%
$	$	%

Effective Date: , 20 *[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]*

7. Notice and Wire Instructions:

[NAME OF ASSIGNOR]

Notices:

Attention:
Telecopier:

with a copy to:

Attention:
Telecopier:

Wire Instructions:

[NAME OF ASSIGNEE]

Notices:

Attention:
Telecopier:

with a copy to:

Attention:
Telecopier:

Wire Instructions:

(2) Set forth, to at least 9 decimal places, as a percentage of the Commitment/Loans of all Lenders thereunder.

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR:

[NAME OF ASSIGNOR]

By: ______________________________
Name:
Title:

ASSIGNEE:
[NAME OF ASSIGNEE]

By: ______________________________
Name:
Title:

[Consented to and](3) Accepted:

CREDIT SUISSE,
acting through its Cayman Islands Branch,
as Administrative Agent

By: ______________________________
Name:
Title:

By: ______________________________
Name:
Title:

[Consented to by Borrower:](4)

DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title:

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(3) If required pursuant to Section 10.6(c) of the Credit Agreement.

(4) If required pursuant to Section 10.6(c) of the Credit Agreement.

ANNEX 1

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION AGREEMENT

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with any Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or any other instrument or document delivered pursuant thereto, other than this Assignment (herein collectively the "Credit Documents"), or any collateral thereunder, (iii) the financial condition of Holdings, the Company, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by Holdings, the Company, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision, and (v) if it is a Non-US Lender, attached to the Assignment is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at that time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to or on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. Post-Default. After the occurrence and during the continuation of an Event of Default, the Company may identify, by written to notice to the Administrative Agent (and the Administrative Agent shall promptly notify the Lenders), up to two banks, financial institutions or other entities who shall not be permitted to be an Eligible

Assignee during the continuation of such Event of Default.

4. General Provisions. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed

counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of laws principles thereof.

EXHIBIT F

CERTIFICATE RE: NON-BANK STATUS

Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and Holdings, each a "Guarantor" and collectively the "Guarantors") the banks and financial institutions listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Pursuant to Section 2.19(c) of the Credit Agreement, the undersigned hereby certifies that it is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code of 1986, as amended. Attached hereto are two original copies of Internal Revenue Service Form W-8 (or its successor form) properly completed and duly executed.

[NAME OF LENDER]

By: ______________________________
Name:
Title:

EXHIBIT G

SOLVENCY CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am the Chief Financial Officer of Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings") and Douglas Dynamics, L.L.C., a Delaware limited liability company (the "Company" or the "Borrower").

2. Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Holdings, the Company, Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and Holdings, each a "Guarantor" and collectively the "Guarantors") the banks and financial institutions listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Lenders (in such capacity, "Collateral Agent").

3. I have reviewed the terms of Sections 3 and 4 of the Credit Agreement and the definitions and provisions contained in the Credit Agreement relating thereto, and, in my opinion, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me to express an informed opinion as to the matters referred to herein.

4. Based upon my review and examination described in paragraph 3 above, I certify, solely in my capacity as the chief financial officer of Holdings and Company, that, as of the date hereof, after giving effect to the incurrence of the Obligations under the Credit Documents, the borrowings under the Revolving Credit Facility and the other transactions contemplated by the Credit Documents, (a) Holdings and its Subsidiaries (on a consolidated basis) are and will be Solvent and (b) Borrower is and will be Solvent.

The foregoing certifications are made and delivered as of [ ], 2007.

DOUGLAS DYNAMICS HOLDINGS, INC.
DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title: Chief Financial Officer

EXHIBIT H

COUNTERPART AGREEMENT

This COUNTERPART AGREEMENT, dated [mm/dd/yyyy] (this "Counterpart Agreement"), is delivered pursuant to that certain Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and Holdings, each a "Guarantor" and collectively the "Guarantors") the banks and financial institutions listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Section 1. Pursuant to Section 5.10 of the Credit Agreement, the undersigned hereby:

(a) agrees that this Counterpart Agreement may be attached to the Credit Agreement and that by the execution and delivery hereof, the undersigned becomes a Guarantor under the Credit Agreement and agrees to be bound by all of the terms thereof;

(b) represents and warrants that each of the representations and warranties set forth in the Credit Agreement and each other Credit Document and applicable to the undersigned is true and correct both before and after giving effect to this Counterpart Agreement, except to the extent that any such representation and warranty relates solely to any earlier date, in which case such representation and warranty is true and correct as of such earlier date;

(c) no event has occurred or is continuing as of the date hereof, or will result from the transactions contemplated hereby on the date hereof, that would constitute an Event of Default or a Default;

(d) irrevocably and unconditionally guarantees the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) and in accordance with Section 7 of the Credit Agreement; and

(e) (i) agrees that this Counterpart Agreement may be attached to the Pledge and Security Agreement, (ii) agrees that the undersigned will comply with all the terms and conditions of the Pledge and Security Agreement as if it were an original signatory thereto, (iii) grants to Secured Parties (as such term is defined in the Pledge and Security Agreement) a security interest in all of the undersigned's right, title and interest in, to and under all personal property, subject to the limited exclusions set forth in Section 2.3 of the Pledge and Security Agreement, of the undersigned including, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (as each of the following is defined in the Pledge and Security Agreement and all of which being hereinafter collectively referred to as the "Collateral"): Accounts; Chattel Paper; Documents; General Intangibles; Goods; Instruments; Insurance; Intellectual Property; Investment Related Property; Letter of Credit Rights; Money; Receivables and Receivable Records; Commercial Tort Claims; to the extent not otherwise included in the foregoing, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and to the extent not otherwise included in the foregoing, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing, and (iv) delivers to Collateral Agent supplements to all schedules attached to the Pledge and Security Agreement. All such Collateral shall be deemed to be

part of the "Collateral" and hereafter subject to each of the terms and conditions of the Pledge and Security Agreement.

Section 2. The undersigned agrees from time to time, upon request of Administrative Agent, to take such additional actions and to execute and deliver such additional documents and instruments as Administrative Agent may request to effect the transactions contemplated by, and to carry out the intent of, this Counterpart Agreement. Neither this Counterpart Agreement nor any term hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party (including, if applicable, any party required to evidence its consent to or acceptance of this Counterpart Agreement) against whom enforcement of such change, waiver, discharge or termination is sought. Any notice or other communication herein required or permitted to be given shall be given pursuant to Section 10.1 of the Credit Agreement, and all for purposes thereof, the notice address of the undersigned shall be the address as set forth on the signature page hereof. In case any provision in or obligation under this Counterpart Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

THIS COUNTERPART AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Counterpart Agreement to be duly executed and delivered by its duly authorized officer as of the date above first written.

[NAME OF SUBSIDIARY]

By: ______________________________
Name:
Title:

Address for Notices:

____
____
____
Attention:

Telecopier

with a copy to:

____
____
____
Attention:
Telecopier

ACKNOWLEDGED AND ACCEPTED,
as of the date above first written:

CREDIT SUISSE,
acting through its Cayman Islands Branch,
as Administrative Agent and as Collateral Agent

By: ______________________________
Name:
Title:

By: ______________________________
Name:
Title:

EXHIBIT I

PLEDGE AND SECURITY AGREEMENT

EXHIBIT J

MORTGAGE

EXHIBIT K

RESTRICTED PAYMENT CERTIFICATE

All calculations under this certificate shall be for the period commencing on the first day of the first full Fiscal Quarter after the Closing Date through and including the last full Fiscal Quarter (taken as one accounting period) preceding the date of determination.

I.	**Restricted Payment EBITDA**	
(a)	Consolidated Adjusted EBITDA	$
	(i) to the extent deducted in the calculation of Consolidated Net Income for such period, all losses which are non-recurring:	$
	(ii) to the extent deducted in the calculation of Consolidated Net Income for such period, interest attributable to Attributable Indebtedness:	$
	(iii) to the extent deducted in the calculation of Consolidated Net Income for such period, the amount of all dividends accrued or payable (whether or not in cash) by the Company or any of its Subsidiaries in respect of preferred stock (other than (A) dividends on Capital Stock (other than Disqualified Capital Stock) of the Company or such Subsidiary payable solely in Capital Stock (other than Disqualified Capital Stock) of the Company or such Subsidiary, as applicable, and (B) by Subsidiaries of the Company to the Company or its wholly-owned Subsidiaries):	$
(b)	Sum of Items (i) thru (iii) above:	$
(c)	Aggregate amount of interest income of the Company and its Subsidiaries during such period paid in cash to the extent reducing Consolidated Adjusted EBITDA:	$
(d)	All gains which are non-recurring (including any gain from the issuance or sale of any Capital Stock) to the extent included in the calculation of Consolidated Net Income for such period, without duplication:	$
(e)	Sum of Items, without duplication, (a), (b) and (c):	$
Restricted Payment EBITDA (Item (e) minus Item (d)):		$

II.	**Cumulative Interest Expense**	
(a)	Interest expensed or capitalized, paid, accrued, or scheduled to be paid or accrued (including, in accordance with the following sentence, interest attributable to Capital Leases and Attributable Indebtedness) of the Company and its Subsidiaries, including (I) amortization of debt issuance costs, original issue discount, debt discounts or premium and other financing fees and expenses and non-cash interest payments or accruals on any Indebtedness, (II) the interest portion of all deferred payment obligations of the Company and its Subsidiaries, and (III) all commissions, discounts and other fees and charges owed by the Company and its Subsidiaries with respect to bankers' acceptances and letters of credit financings and Hedge Agreements:	$
(b)	All cash dividends paid by the Company or any of its Subsidiaries in respect of preferred stock (other than by Subsidiaries of the Company to the Company or its wholly owned Subsidiaries):	$
Cumulative Interest Expense (the aggregate amount (without duplication and determined in each case in accordance with GAAP) of Items (a) and (b)):		$

III.	**Restricted Payment Amount**	
(a)	Restricted Payment EBITDA:	$
(b)	product of 2.0 multiplied by Cumulative Interest Expense:	$
(c)	Item (a) <u>minus</u> Item (b):(20)	$
(d)	100% of the aggregate net cash proceeds received by the Company from a capital contribution or sale of Capital Stock to Holdings after the Closing Date:	$
(e)	An amount equal to the net amounts received in respect of Investments made under Section 6.7(l) or 6.7(m) of the Credit Agreement in any Person resulting from cash distributions on or cash repayments of any Investments, including payments of interest on Indebtedness, dividends, repayments of loans or advances, or other distributions or other transfers of assets, in each case to Company, DD Finance, Fisher or any of their respective Subsidiaries or from the net cash proceeds from the sale of any such Investment, not to exceed, in each case, the amount of Investments previously made by Company, DD Finance, Fisher or any of their respective Subsidiaries in such Person, less the cost of disposition (and excluding Investments in Subsidiaries):(21)	$
(f)	Sum of Items (c) through (e) above:	$
(g)	Aggregate amount of Restricted Payments made pursuant to Sections 6.5(a)(ii) and 6.5(c)(iv) of the Credit Agreement:	$
(h)	Amounts required to be applied to prepay Loans pursuant to Section 2.13(c) of the Credit Agreement:	$
(i)	(without duplication) amounts applied or utilized pursuant to Section 6.5(d), Section 6.5(f), Section 6.7(l), Section 6.7(m) or Section 6.16(c) of the Credit Agreement:	
(j)	Sum of Items (g) through (i):	$
Restricted Payment Amount (Item (f) <u>minus</u> Item (j)):(22)		$

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(20) Not to be less than zero.

(21) Except in each case, in order to avoid duplication, to the extent any such payment or proceeds have been included in the calculation of Restricted Payment EBITDA.

(22) For purposes of this definition, (i) the amount of any payment or Investment made or returned hereunder, if other than in cash, shall be the fair market value thereof, as determined in the good faith reasonable judgment of the board of directors of the Company (or similar governing body) for such payments or Investments with a value in excess of $1.0 million, and otherwise by an executive officer of the Company at the time made or returned, as applicable, (ii) interest with respect to Capital Leases shall be deemed to accrue at an interest rate reasonably determined in good faith by the Company to be the rate of interest implicit in such Capital Lease in accordance with GAAP and (iii) interest expense attributable to any Indebtedness represented by the guarantee by the Company or any of its Subsidiaries of an obligation of another Person shall be deemed to be the interest expense attributable to the Indebtedness guaranteed.

EXHIBIT L

INTERCREDITOR AGREEMENT

EXHIBIT M

<u>FIXED CHARGE COVERAGE COMPLIANCE CERTIFICATE</u>

All calculations under this certificate shall be for the Fiscal Quarter Period preceding the date of determination, which shall be the last day of any month.

I.	**Consolidated Interest Expense**

(a)	total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) payable in cash of the Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Company and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements: (1)	$
(b)	the aggregate amount of interest income of the Company and its Subsidiaries during such period paid in cash	$
Consolidated Interest Expense (Item (a) minus Item (b))		$
II.	**Consolidated Adjusted EBITDA**	
(a)	Consolidated Net Income:	$
	(i) Consolidated Interest Expense and non-Cash interest expense	$
	(ii) provisions for taxes based on income	$
	(iii) total depreciation expense	$
	(iv) total amortization expense (2)	$
	(v) non-cash impairment charges	$
	(vi) non-cash expenses resulting from the grant of stock and stock options and other compensation to management personnel of the Company and its Subsidiaries pursuant to a written incentive plan or agreement	$
	(vii) other non-Cash items that are unusual or otherwise non-recurring items	$
	(viii) expenses for fees under the Management Services Agreement	$
	(ix) any extraordinary losses and non-recurring charges during any period(3)	$
	(x) restructuring charges or reserves (4)	$

(1) Excluding any amounts referred to in Section 2.10 of the Credit Agreement payable on or before the Closing Date and amounts with respect to the termination of Interest Rate Agreements entered into within 90 days of the Closing Date.

(2) Including amortization of goodwill, other intangibles, and financing fees and expenses.

(3) Including severance, relocation costs, one-time compensation charges and losses or charges associated with Interest Rate Agreements.

(4) Including costs related to closure of Facilities.

	(xi) any transaction costs incurred in connection with the issuance of Securities or any refinancing transaction, in each case whether or not such transaction is consummated	$
	(xii) any fees and expenses related to any Permitted Acquisitions	$
	(xiii) the Financial Performance Covenant Cure Amount	$
(b)	Sum of Items (i) thru (xiii)	$
	(i) non-Cash items increasing Consolidated Net Income for such period that are unusual or otherwise non-recurring items	$
	(ii) cash payments made during such period reducing reserves or liabilities for accruals made in prior periods but only to the extent such reserves or accruals were added back to “Consolidated Adjusted EBITDA” in a prior period pursuant to clauses (vi) or (vii) above	$
	(iii) Restricted Payments made during such period to Holdings pursuant to Section 6.5(c)(i)	$
(c)	Sum of Items (i) thru (iii)	$
(d)	Sum of Item (a) and (b)(5)	$
Consolidated Adjusted EBITDA (Item (d) minus Item (c)(6)):		$
III.	**Consolidated Fixed Charges**	
(a)	Consolidated Interest Expense	$
(b)	scheduled payments of principal on Consolidated Total Debt	$
(c)	Consolidated Capital Expenditures (7)	$
(d)	the portion of taxes based on income actually paid in cash during such period by the Company or any of its Subsidiaries whether for such period or any other period	$
(e)	Restricted Payments permitted under Section 6.5(c)(iii) of the Credit Agreement and which are paid in cash during such period	$

Consolidated Fixed Charges (Sum of Items (a)-(e)(8))	$

(5) Without duplication to the extent deducted in the calculation of Consolidated Net Income for such period.

(6) Without duplication.

(7) The aggregate of all expenditures of the Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of the Company and its Subsidiaries (other than those financed with secured Indebtedness permitted by Section 6.1 of the Credit Agreement or made or incurred pursuant to Section 6.8(b)(ii) of the Credit Agreement).

(8) Without duplication.

IV.	**Fixed Charge Coverage Ratio**	
(a)	Consolidated Adjusted EBITDA	$
(b)	Consolidated Fixed Charges	$
Fixed Charge Coverage Ratio (Item (a) divided by Item (b))		. :1.00

Schedule 4.1
(Organization and Capital Structure)

Full Legal Name	Type of Organization	Jurisdiction of Organization	Capital Structure
Douglas Dynamics Holdings, Inc.	corporation	Delaware	1,000,000 shares of Common Stock 1 share is designated Series B Preferred Stock and 1 share is designated Series C Preferred Stock
Douglas Dynamics, L.L.C.	limited liability company	Delaware	Percentage Interest of limited liability company units
Douglas Dynamics Finance Company	corporation	Delaware	1,000 shares of Common Stock
Fisher, LLC	limited liability company	Delaware	Percentage Interest of limited liability company units

Schedule 4.2
(Capital Stock and Ownership)
[as of May 21, 2007]

Entity	Capital Structure	Ownership
Douglas Dynamics Holdings, Inc.	1,000,000 shares of Common Stock; 606,656 shares issued and outstanding	Douglas Dynamics Holdings, LLC (50.19%) Ares Corporate Opportunities Fund, L.P. (32.97%) General Electric Pension Trust (15.25%) The remaining stockholders own 1.58% in the aggregate (with each owning less than 0.40% individually).
	1 share is designated Series B Preferred Stock; 1 share of Series B Preferred Stock issued and outstanding	Douglas Dynamics Holdings, LLC (100%)
	1 share is designated Series C Preferred Stock; 1 share of Series C Preferred Stock issued and outstanding	Ares Corporate Opportunities Fund, L.P. (100%)
Douglas Dynamics, L.L.C.	Percentage Interest of limited liability company units	Douglas Dynamics Holdings, Inc. (100%)
Douglas Dynamics Finance Company	1,000 shares of Common Stock	Douglas Dynamics, L.L.C. (100%)
Fisher, LLC	Percentage Interest of limited liability company units	Douglas Dynamics, L.L.C. (100%)

Existence of existing option, warrant, call, right, commitment or other like agreement:

Douglas Dynamics Holdings, Inc.

Grantees (as a group)	Number of Awards Granted
Douglas Management	58,215 options to acquire common stock 8,070 deferred stock units
Douglas Independent Directors	4,124 options to acquire common stock
Aurora Advisors	1,500 options to acquire common stock
Ares Advisors	857 options to acquire common stock

*Note: Approximately 7,800 options to acquire common stock have been reserved for members of Douglas management, but have not been allocated/issued.

Douglas Dynamics, L.L.C.

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.9
(Material Adverse Changes)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.11
(Adverse Proceedings)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

The inclusion of these items on this schedule is not an admission by the Borrower that these items represent a Material Adverse Effect or that such disclosure was required to be set forth as an exception to this representation.

Bjork, David (Case number MICV2005-01131, filed in Massachusetts Superior Court)

- This is a personal injury case with a date of loss of December 16, 2002. Amount of damages is unspecified, and the Company has not reserved any amount with respect to this matter.

D'Angelo, Amy (Case number 98-3281, filed in New York)

- This is a personal injury case with a date of loss of February 4, 1998. Plaintiff is seeking $10,000,000 in damages, and the Company has reserved $25,000 with respect to this matter.

Employment and labor-related claims are listed in Schedule 4.18.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None

Schedule 4.13
(Real Estate Assets)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

4.13(i)

915 Riverview Drive
Johnson City, TN

7777 N. 73rd Street
Milwaukee, WI

50 Gordon Drive
Rockland, ME

4.13(ii)

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.14
(Environmental Matters)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.18
(Employee Matters)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.19
(Employee Benefit Plans)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

Retired/Former Employee Benefit Plans

Douglas Dynamics L.L.C. Insurance Coverage Policy for Retirees, as revised December 31, 2003.

Funding of Pension Plans

As of December 31, 2006, the present value of the aggregate benefit liabilities under the Douglas Dynamics LLC Salaried Pension Plan and the Douglas Dynamics LLC Pension Plan for Hourly Employees exceeded the aggregate current value of the assets under such plans by approximately $5.1 million.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.22
(Certain Existing Liens)

See Schedule 6.2.

Schedule 4.24
(Deposit Accounts)

Description	Bank Account Number	Loan Party	Depository Institution/ Contact Information
Main Operating Account, Concentration Account for all Controlled Disbursement Accounts, Sweep Account for Fisher and Western Lockbox		Douglas Dynamics, L.L.C.	
Accounts Payable Controlled Disbursement account for all DD locations		Douglas Dynamics, L.L.C.	
Flex Spending Claims Controlled Disbursement account for all DD locations		Douglas Dynamics, L.L.C.	
Medical Claims Controlled Disbursement account for all DD locations		Douglas Dynamics, L.L.C.	
Dental Claims Controlled Disbursement account for all DD locations		Douglas Dynamics, L.L.C.	
401(k) account		Douglas Dynamics, L.L.C.	
Payroll Clearing-WI		Douglas Dynamics, L.L.C.	
general account		Douglas Dynamics Holdings Inc.	
general account		Douglas Dynamics Finance Company	

Description	Bank Account Number	Loan Party	Depository Institution/ Contact Information
Payroll Clearing-ME		Fisher, LLC	

Schedule 6.1(f)
(Certain Indebtedness)

None.

Schedule 6.2
(Permitted Liens)

Delaware Secretary of State searched on 04/24/07. Secured Party: Hyster Credit Company, P.O. Box 27248, Tempe, AZ 85285-7248. File no. 2197519, 07/23/2002. One Hyster Model S30XM, One Hyster Model H40XM Lift Truck together with all attachments and accessories.

Delaware Secretary of State searched on 04/24/07. Secured Party: Hyster Credit Company, P.O. Box 4366, Portland, OR 97208. File no. 2200036, 07/29/2002. One Hyster Model S30XM, One Hyster Model H40XM Lift Truck together with all attachments and accessories.

Delaware Secretary of State searched on 04/24/07. Secured Party: Bystronic Inc., 185 Commerce Drive, Hauppauge, NY, 11788. File no. 6046680, 01/27/2006. One BYSTAR 4020-2 (4400 Watt) Job No. 1803.

Schedule 6.7
(Certain Investments)

None.

Schedule 6.12
(Certain Affiliate Transactions)

All transactions, including payments, in respect of the Amended and Restated Joint Management Services Agreement dated as of April 12, 2004.

Exhibit 10.3

AMENDMENT NO. 1 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 1 TO CREDIT AND GUARANTY AGREEMENT (this "Amendment"), dated as of April 16, 2010, is made and entered into among DOUGLAS DYNAMICS, L.L.C., a Delaware limited liability company (the "Company" or "Borrower Representative"), Fisher, LLC, a Delaware limited liability company ("Fisher"), Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance" and, together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") and each of the Lenders (as hereinafter defined) party hereto.

RECITALS

A. The Borrowers and the Lenders party hereto are parties to that certain Credit and Guaranty Agreement dated as of May 21, 2007 (the "Credit Agreement") among the Borrowers, Credit Suisse AG, Cayman Islands Branch, as Administrative Agent (in such capacity, the "Administrative Agent") on behalf of the Lenders, each lender from time to time party thereto (the "Lenders") and each of the other banks, financial institutions and other entities from time to time party thereto.

B. The Borrowers have requested that the Lenders agree, subject to the conditions and on the terms set forth in this Amendment, to amend certain provisions of the Credit Agreement as set forth herein.

C. The Lenders are willing to amend the Credit Agreement, subject to the conditions and on the terms set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrowers and each of the Lenders party hereto agree as follows:

1. Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Amendment shall have the meanings given in the Amended Credit Agreement (as defined below), and the rules of interpretation set forth in the Amended Credit Agreement shall apply to this Amendment. In addition:

"Qualifying IPO" means the consummation of the first underwritten public offering of the Capital Stock (other than Disqualified Capital Stock) of Holdings following the Closing Date pursuant to a registration statement filed with the Securities and Exchange Commission in accordance with the Securities Act.

"Qualifying IPO Payment" means, concurrent with the closing of a Qualifying IPO, the one-time payment to Sponsor in connection with the termination of the Management Services Agreement in an aggregate amount not to exceed $6,000,000.

"Qualifying Preferred Stock Redemption" means, concurrent with the closing of a Qualifying IPO, the payment of $1,000 to Aurora Equity Partners II L.P. and $1,000 to Ares Limited Partnership in respect of the redemption of the one share of Series B Preferred Stock and Series C Preferred Stock held by Aurora Equity Partners II L.P. and the Ares Limited Partnership, respectively.

"Qualifying Senior Notes Redemption" means, concurrent with the closing of a Qualifying IPO, the Company and DD Finance (i) have given irrevocable and unconditional notice of redemption for all of the outstanding Senior Notes, (ii) have timely and irrevocably deposited or caused to be deposited with the trustee under the Senior Notes Indenture proceeds of a Qualifying IPO, proceeds of Additional Term Loans (as defined in the Term Loan Facility), Cash and/or proceeds of Revolving Loans sufficient to pay and discharge the entire indebtedness (including all principal, premium, if any, and accrued interest) on all outstanding Senior Notes and (iii) have satisfied all other conditions precedent to the discharge of the Senior Notes Indenture set forth in Section 8.8 of the Senior Notes Indenture.

2. Consent and Agreement. Notwithstanding anything to the contrary in the Credit Documents, the Lenders hereby consent to (i) the redemption of the Senior Notes by the Company pursuant to a Qualifying Senior Notes Redemption, (ii) the payment of the Qualifying IPO Payment and (iii) the redemption by Holdings of all preferred stock of Holdings pursuant to a Qualifying Preferred Stock Redemption. The Company hereby agrees to consummate a Qualifying Senior Notes Redemption concurrently with the consummation of a Qualifying IPO.

3. Amendment. Concurrently with the consummation of a Qualifying IPO, the terms and provisions of the Credit Agreement are hereby amended by replacing such terms and provisions in their entirety with the terms and provisions set forth in the Credit Agreement attached hereto as Exhibit A (the "Amended Credit Agreement").

4. Representations and Warranties. To induce the Lenders to agree to this Amendment, each Borrower represents to the Administrative Agent and the Lenders that as of the date hereof:

(a) such Borrower has all power and authority to enter into this Amendment and to carry out the transactions contemplated by, and to perform its obligations under or in respect of, this Amendment;

(b) the execution and delivery of this Amendment and the performance of the obligations of such Borrower hereunder have been duly authorized by all necessary action on the part of such Borrower;

(c) the execution and delivery of this Amendment by such Borrower, and the performance of the obligations of such Borrower hereunder do not and will not conflict with or violate (i) any provision of the articles of incorporation or bylaws (or similar constituent documents) of such Borrower, (ii) any applicable provision of any material law, statute, rule, regulation, order, writ, injunction or decree of any court or Governmental Authority or (iii) any indenture, agreement or instrument to which

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such Borrower is a party or by which such Borrower or any property of such Borrower, is bound, and do not and will not require any consent or approval of any Person that has not been obtained;

(d) this Amendment has been duly executed and delivered by such Borrower and the Credit Agreement and the other Credit Documents, as modified by this Amendment, are the legal, valid and binding obligations of such Borrower, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

(e) no event has occurred and is continuing or will result from the execution and delivery of this Amendment or the consummation of a Qualifying IPO, the

Qualifying IPO Payment, the Qualifying Senior Notes Redemption and/or the Qualifying Preferred Stock Redemption (in each case, after giving effect to this Amendment) that would constitute a Default or an Event of Default;

(f) since December 31, 2006, no event has occurred that has resulted, or could reasonably be expected to result, in a Material Adverse Effect;

(g) each of the representations and warranties made by such Borrower in or pursuant to the Credit Documents are true and correct in all material respects on and as of the date this representation is being made, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date;

(h) the Company has obtained $40 million in Additional Term Loan Commitments (as defined in the Term Loan Facility) under the Term Loan Facility; and

(i) after giving effect to (i) a Qualifying IPO, (ii) the redemption of the Senior Notes by the Company pursuant to the Qualifying Senior Notes Redemption, (iii) the payment of the Qualifying IPO Payment, (iv) the redemption by Holdings of all preferred stock of Holdings pursuant to the Qualifying Preferred Stock Redemption and (v) the incurrence of $40 million aggregate principal amount of Additional Term Loan Commitments under the Term Loan Facility, the aggregate amount of (1) Cash of the Company in Deposit Accounts subject to a Blocked Account Agreement and (2) Excess Availability shall be at least $15,000,000; provided, that Excess Availability will be calculated without giving effect to any Cash.

Each Lender party to this Amendment represents and warrants to each Agent and each Lender that it has made its own independent investigation of the terms of the Credit Agreement and the Amended Credit Agreement and the facts and circumstances surrounding this Amendment, and has not relied in any way on any statement, advice or recommendation of any Agent or Lender in connection herewith. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation on behalf of Lenders or to provide any Lender with any information, advice or recommendation with respect thereto, whether coming into its possession before the execution of this Amendment or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders relating to any of the foregoing.

5. Effectiveness of Amendments. This Amendment (other than Section 6 hereof which shall be effective as set forth in such Section) shall be effective as of the first date (the "First Amendment Effective Date") on which all of the following conditions precedent have been satisfied:

(a) The Administrative Agent shall have received a counterpart signature page of this Amendment duly executed by each of the Credit Parties and the Requisite Lenders;

(b) The Administrative Agent shall have received a certificate signed by the chief financial officer of the Borrowers dated the First Amendment Effective Date, certifying (A) that the representations and warranties contained in Section 4 of this Amendment are true and correct as of the First Amendment Effective Date and (B) that no event shall have occurred and be continuing or would result from the consummation of a Qualifying IPO, the Qualifying Senior Notes Redemption, the Qualifying Preferred Stock Redemption and/or the Qualifying IPO Payment (in each case, after giving effect to this Amendment) that would constitute a Default or an Event of Default;

(c) The Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), in connection with this Amendment (or shall have made arrangements for the payment thereof satisfactory to the Administrative Agent);

(d) a Qualifying IPO shall have occurred;

(e) Each Credit Party shall have delivered a solvency certificate in form and substance satisfactory to the Administrative Agent; and

(f) Company shall pay, to each Lender executing this Amendment on or before April 16, 2010 by 5:00 p.m. New York City Time, an amendment fee equal to 0.25% of such Lender's Revolving Exposure, which amendment fee shall be payable concurrently with the consummation of the Qualifying IPO.

6. Delivery of Financial Statements. Notwithstanding the provisions set forth in Section 5.1(c) of the Credit Agreement to the contrary, the financial statements of Holdings and its Subsidiaries for the Fiscal Year ended December 31, 2009 that were delivered to the Administrative Agent prior to the date hereof shall be deemed to satisfy the requirements of Section 5.1(c) that such financial statements be of the Company and its Subsidiaries solely with respect to the Fiscal Year ended December 31, 2009. Notwithstanding the provisions set forth in Section 5.1(b) of the Credit Agreement requiring delivery of certain financial statements of the Company and its Subsidiaries, delivery of comparable financial statements of Holdings and its Subsidiaries shall be deemed to satisfy such requirement solely with respect to the Fiscal Quarters ending March 31, 2010 and June 30, 2010. Notwithstanding the provisions of Section 5 of this Amendment, the provisions of this Section 6 shall be effective immediately upon receipt by Administrative Agent of a counterpart signature page of this Amendment duly executed by each of the Credit Parties and the Requisite Lenders.

7. Miscellaneous. **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).** This Amendment may be executed in one or more duplicate counterparts and when signed by all of the parties listed below shall constitute a single binding agreement. Except for the amendments set forth in Section 3 hereof and the consent set forth in Section 2 hereof, all of the provisions of the Credit Agreement and the other Credit Documents shall remain in full force and effect. The foregoing amendments shall be strictly construed in accordance with the express terms thereof. Except with respect to the matters specifically waived or amended thereby, Section 2 and 3 above shall not operate as a waiver of any right, remedy, power or privilege of any Lender or the Administrative Agent under the Credit Agreement or any other Credit Document or of any other term or condition of the Credit Agreement or any other Credit

Document. This Amendment shall be deemed a "Credit Document" as defined in the Credit Agreement. Sections 10.15 and 10.16 of the Credit Agreement shall apply to this Amendment and all past and future amendments to the Credit Agreement and other Credit Documents as if expressly set forth herein or therein.

8. Acknowledgement and Consent.

Holdings has read this Amendment and consents to the terms hereof and further hereby confirms and agrees that, notwithstanding the effectiveness of this Amendment, the obligations of Holdings under, and the Liens granted by Holdings as collateral security for the indebtedness, obligations and liabilities evidenced by the Credit Agreement and the other Credit Documents pursuant to, each of the Credit Documents to which Holdings is a party shall not be impaired and each of the Credit Documents to which Holdings is a party is, and shall continue to be, in full force and effect and is hereby confirmed and ratified in all respects. Holdings and each Borrower hereby acknowledges and agrees that the Secured Obligations under, and as defined in, the ABL Pledge and Security Agreement dated as of May 21, 2007, by and among Holdings and the Borrowers and Administrative Agent (the "Pledge and Security Agreement") and, with respect to the other Collateral Documents, the Obligations secured by the Liens granted thereby, will include all Obligations under, and as defined in, the Amended Credit Agreement.

Holdings acknowledges and agrees that (i) notwithstanding the conditions to effectiveness set forth in this Amendment, Holdings is not required by the terms of the Credit Agreement or any other Credit Document to consent to the amendments to the Credit Agreement effected pursuant to this Amendment and (ii) nothing in the Credit Agreement, this Amendment or any other Credit Document shall be deemed to require the consent of Holdings to any future amendments to the Credit Agreement.

9. Consent to Term Amendment and Intercreditor Amendment.

(a) Pursuant to Section 5.3(a) of the Intercreditor Agreement, the Lenders party hereto hereby consent to (i) an amendment to the Term Credit Agreement (as defined in the Intercreditor Agreement) in substantially the form of Exhibit B and (ii) any amendments to the other Term Loan Documents (as defined in the Intercreditor Agreement) executed in connection therewith; and

(b) The Lenders party hereto hereby consent to the execution of an amendment to the Intercreditor Agreement in substantially the form of Exhibit C (the "Intercreditor Amendment") and hereby authorize and instruct (i) the Administrative Agent to execute the Intercreditor Amendment in its capacity as ABL Administrative Agent thereunder and (ii) the Collateral Agent to execute the Intercreditor Amendment in its capacity as ABL Collateral Agent thereunder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BORROWERS:

DOUGLAS DYNAMICS, L.L.C.

By: /s/ Robert McCormick
Name: Robert McCormick
Title: VP CFO

DOUGLAS DYNAMICS FINANCE COMPANY

By: /s/ Robert McCormick
Name: Robert McCormick
Title: VP CFO

FISHER, LLC

By: /s/ Robert McCormick
Name: Robert McCormick
Title: VP CFO

HOLDINGS (for purposes of Section 8):

DOUGLAS DYNAMICS, INC.

By: /s/ Robert McCormick
Name: Robert McCormick
Title: VP CFO

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as a Lender

By: /s/ William O'Daly
Name: William O'Daly
Title: Director

By: /s/ Ilya Ivashkov
Name: Ilya Ivashkov
Title: Associate

JPMORGAN CHASE BANK, N.A.
as a Lender

By: /s/ Richard Marcus

Name: Richard Marcus
Title: Senior Vice President

Amendment No. 1

Wachovia Capital Finance Corporation (Central),
as a Lender

By: /s/ Maged Ghebrial
Name: Maged Ghebrial
Title: Vice President

Amendment No. 1

ACKNOWLEDGED:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as a Administrative Agent

By: /s/ William O'Daly
Name: William O'Daly
Title: Director

By: /s/ Ilya Ivashkov
Name: Ilya Ivashkov
Title: Associate

Amendment No. 1

Exhibit A

Amended Credit Agreement

See attached.

EXHIBIT A to Amendment No. 1

COMPOSITE CREDIT AGREEMENT
(as amended by Amendment No. 1, dated as of April 16, 2010)

CREDIT AND GUARANTY AGREEMENT

dated as of May 21, 2007

among

DOUGLAS DYNAMICS, L.L.C.
DOUGLAS DYNAMICS FINANCE COMPANY
FISHER, LLC
as Borrowers

DOUGLAS DYNAMICS, INC.,
as Guarantor,

THE BANKS AND FINANCIAL INSTITUTIONS LISTED HEREIN,
as Lenders,

CREDIT SUISSE SECURITIES (USA) LLC,
as Sole Bookrunner and Sole Lead Arranger,

WACHOVIA CAPITAL FINANCE CORPORATION (CENTRAL),
as Documentation Agent,

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

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH
as Administrative Agent

$60,000,000 Senior Secured Revolving Credit Facility

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	N	Intercreditor Agreement
	O	Fixed Charge Coverage Compliance Certificate

CREDIT AND GUARANTY AGREEMENT

CREDIT AND GUARANTY AGREEMENT, dated as of May 21, 2007 (the "**Agreement**"), by and among Douglas Dynamics, Inc., a Delaware corporation ("**Holdings**"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "**Company**" or the "**Borrower Representative**"), Fisher, LLC, a Delaware limited liability company ("**Fisher**") and Douglas Dynamics Finance Company, a Delaware corporation ("**DD Finance**," and together with Fisher and the Borrower Representative, each a **"Borrower"** and collectively the "**Borrowers**") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages hereof (together with their respective successors and assigns, each individually referred to herein as a "**Lender**" and collectively as "**Lenders**"), Credit Suisse Securities (USA) LLC, as sole bookrunner and sole lead arranger (the "**Arranger**"), JPMorgan Chase Bank, N.A., as syndication agent (in such capacity, "**Syndication Agent**"), as Wachovia Capital Finance Corporation (Central), as documentation agent (in such capacity, "**Documentation Agent**"), JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, the "**Collateral Agent**") and Credit Suisse AG, Cayman Islands Branch("**Credit Suisse**") as administrative agent for the Lenders (in such capacity, "**Administrative Agent**").

RECITALS:

WHEREAS, the Borrower Representative has requested, and the Lenders have agreed, to extend certain credit facilities to the Borrowers on the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"**ABL Priority Collateral**" has the meaning assigned to that term in the Intercreditor Agreement.

"**Account Control Event**" means the occurrence and continuance of (i) any Event of Default, or (ii) any Liquidity Event (A) for which a Liquidity Event Cure Notice has not been properly delivered in accordance with Section 8.2 within three (3) days after the occurrence thereof, (B) for which a Liquidity Event Cure Notice was timely delivered and a Liquidity Event Cure did not timely occur in accordance with Section 8.2 or (C) for which no Liquidity Event Cure Notice is available. For purposes of this Agreement, the occurrence of an Account Control Event shall be deemed continuing at the Administrative Agent's or Collateral Agent's option (x) so long as such Event of Default exists, and/or (y) if the Account Control Event arises as a result of a Liquidity Event described in clause (ii) above, until Excess Availability is $6.0 million or more for thirty (30) consecutive days (unless the Account Control Event has ceased to exist as provided in Section 8.2), in which case an Account Control Event shall no longer be deemed to

be continuing for purposes of this Agreement; *provided that* a Account Control Event shall be deemed continuing (even if an Event of Default is no longer continuing and/or such Liquidity Event has ceased to exist for thirty (30) consecutive days) at all times after an Account Control Event has occurred and been discontinued on six (6) occasions

after the Closing Date.

"**Account Debtor**" means, "Account Debtor," as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Accounts**" means all "accounts", as such term is defined in the UCC as in effect on the date hereof in the State of New York, in which such Person now or hereafter has rights; provided, however, that for purposes of calculating the Borrowing Base, the term "Accounts" shall not include Excluded Deposit Accounts (as defined below).

"ACH" mean automated clearing house transfers.

"**Additional Co-Borrower**" shall mean any wholly-owned Domestic Subsidiary of a Borrower which may hereafter be approved by the Administrative Agent and the Collateral Agent in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment which (a) is currently able to prepare all collateral reports in a comparable manner to the Borrowers' reporting procedures, (b) has executed and delivered to the Administrative Agent and the Collateral Agent such joinder agreements to this Agreement, contribution and set-off agreements and other Collateral Documents as the Administrative Agent or the Collateral Agent have reasonably requested and so long as each of the Administrative Agent and the Collateral Agent have received and approved, in their reasonable discretion, all UCC search results necessary to confirm the Collateral Agent's First Priority or Second Priority Lien, as applicable, on all of such Additional Co-Borrower's real, personal and mixed property (including Capital Stock).

"**Administrative Agent**" has the meaning assigned to that term in the preamble hereto.

"**Adjusted Eurodollar Rate**" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate per annum obtained by dividing (i) (a) the rate per annum determined by the Administrative Agent by reference to the British Bankers' Association Interest Settlement Rates for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date (as set forth by Bloomberg Information Service or any successor thereto or any other service selected by Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates), or (b) in the event the rate referenced in the preceding clause (a) is not available, the rate per annum equal to the offered quotation rate to first class banks in the London interbank market by Credit Suisse for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Administrative Agent, in its capacity as a Lender, for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on

such Interest Rate Determination Date, by (ii) an amount equal to (a) oneminus (b) the Applicable Reserve Requirement.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Holdings or any of its Subsidiaries, threatened against or affecting Holdings or any of its Subsidiaries or any property of Holdings or any of its Subsidiaries.

"**Affected Lender**" has the meaning assigned to that term in Section 2.17(b).

"**Affected Loans**" has the meaning assigned to that term in Section 2.17(b).

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"**Agent**" means each of Administrative Agent, Collateral Agent, Syndication Agent and Documentation Agent.

"**Aggregate Amounts Due**" has the meaning assigned to that term in Section 2.16.

"**Aggregate Payments**" has the meaning assigned to that term in Section 7.2.

"**Agreement**" has the meaning assigned to that term in the preamble hereto.

"**Applicable Margin**" means a percentage, per annum, equal to (i) initially, for any Base Rate Loans, 0.50% and for any Eurodollar Rate Loans, 1.50%, and (ii) following the delivery of the Compliance Certificate in respect of Fiscal Year 2007, determined by reference to the applicable Performance Level in effect from time to time set forth below:

Performance Level	Level I	Level II
Base Rate Applicable Margin and Swing Line Applicable Margin	0.25%	0.50%
Eurodollar Rate Applicable Margin	1.25%	1.50%

"**Applicable Reserve Requirement**" means, at any time, for any Eurodollar Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including, without limitation, any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained by any member bank of the Federal Reserve System against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors of the Federal Reserve System or any successor thereto. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted Eurodollar Rate is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Eurodollar Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurodollar Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"**Ares Group Investors**" means (i) the Ares Corporate Opportunities Fund, L.P. (the "**Ares Limited Partnership**"), (ii) ACOF Management, L.P.,

(iii) ACOF Operating Manager, L.P., (iv) Ares Management, Inc., (v) Ares Management LLC, (vi) any limited partners of any of the foregoing entities and (vii) partners, members, managing directors, officers or employees of any of those entities referenced in clauses (ii) through (v), provided that each Person set forth in clauses (vi) and (vii) shall only constitute an Ares Group Investor so long as it gives a proxy to, or otherwise agrees that it will vote in a manner consistent with, the Ares Limited Partnership (except to the extent otherwise required by ERISA or other applicable law) and the entity to which it is required to give a proxy to or otherwise vote consistently with continues to own Capital Stock in Parent.

"**Arranger**" has the meaning assigned to that term in the preamble hereto.

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person (other than the Borrowers or any Guarantor Subsidiary), in one transaction or a series of transactions, of all or any part of Holdings', Company's, or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of any of Holdings' Subsidiaries, other than (i) inventory sold or leased in the ordinary course of business (excluding any such sales by operations or divisions discontinued or to be discontinued), (ii) equipment that is surplus, obsolete, worn-out, or no longer used or useful in the business of Holdings, Company or any of its Subsidiaries, (iii) leasehold interests that are no longer used or useful in the business of Holdings, Company or any of its Subsidiaries, (iv) dispositions, by means of trade-in, of equipment used in the ordinary course of business, so long as such equipment is replaced, substantially concurrently, by like-kind equipment in an effort to upgrade the Facilities of Company and its Subsidiaries, (v) Cash and Cash Equivalents used in a manner not prohibited by the Credit Documents or the Term Loan Documents, and (vi) sales of other assets for aggregate consideration of less than $1,000,000 with respect to any transaction or series of related transactions and less than $3,000,000 in the aggregate during any calendar year (provided, that for purposes of calculating the amounts set forth in this clause (vi),

any transactions or series of related transactions involving aggregate consideration of $50,000 or less may be excluded).

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of Exhibit E, with such amendments or modifications as may be approved by Administrative Agent.

"**Attributable Indebtedness**" in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP.

"**Aurora Group Investors**" means (i) Aurora Equity Partners II L.P. and Aurora Overseas Equity Partners II, L.P. (the "**Limited Partnerships**"), (ii) Aurora Capital Partners II L.P. and Aurora Overseas Capital Partners II, L.P. (the "**General Partners**"), (iii) Aurora Advisors II LLC and Aurora Overseas Advisors, II, LDC (the "**Ultimate General Partners**"), (iv) any limited partners of the Limited Partnerships or any limited partners of the General Partners, provided that such limited partner gives a proxy to, or otherwise agrees that it will vote in a manner consistent with, the Limited Partnerships (except to the extent otherwise required by ERISA or other applicable law) or the General Partners, (v) any managing director or employee of Aurora Management Partners LLC, provided that such managing director or employee gives a proxy to, or otherwise agrees that he or she will vote in a manner consistent with the Limited Partnerships (except to the extent otherwise required by ERISA or other applicable law) or the General Partners, (vi) any member of the Advisory Board of Aurora Management Partners LLC, provided that such member gives a proxy to, or otherwise agrees that he or she will vote in a manner consistent with, the Limited Partnerships (except to the extent otherwise required by ERISA or other applicable law) or the General Partners, (vii) any Affiliate of Aurora Management Partners LLC, provided that such Affiliate gives a proxy to, or otherwise agrees that it will vote in a manner consistent with, the Limited Partnerships or the General Partners, and (viii) any investment fund or other entity controlled by or under common control with, any one or more of the Ultimate General Partners or Aurora Management Partners LLC or the principals that control any one or more of the Ultimate General Partners or Aurora Management Partners LLC; provided that each Person set forth in clauses (iv) through (viii) shall only constitute an Aurora Group Investor so long as the entity to which it is required to give a proxy to or otherwise vote consistently with continues to own Capital Stock in Parent.

"**Authorized Officer**" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), and such Person's chief financial officer or treasurer.

"**Average Daily Excess Availability**" means the average daily Excess Availability for the immediately preceding Fiscal Quarter.

"**Banking Services Agreement**" means each and any of the following bank services provided to any Credit Party by any Lender Counterparty pursuant to a Banking Services Agreement including: (a) commercial credit cards, (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Base Rate**" means, for any day, a rate per annum equal to the greater of (i) the Prime Rate in effect on such day and (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1%.

"**Base Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"**Blocked Account**" means any Deposit Account subject to a Blocked Account Agreement.

"**Blocked Account Agreement**" means an account control agreement on terms reasonably satisfactory to the Collateral Agent.

"**Blocked Account Bank**" means each bank with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

"**Beneficiary**" means each Agent, Issuing Bank, Lender and Lender Counterparty.

"**Borrower**" means the Borrower Representative, DD Finance, Fischer and any Additional Co-Borrower that may become party hereto.

"**Borrowing Base**" means at any time, an amount equal to the lesser of:

(a) the sum of, without duplication:

(i) the face amount of Eligible Accounts of Borrowers multiplied by the advance rate of 85%, plus

(ii) the lesser of (A) the advance rate of 70% of the Cost of Eligible Inventory of Borrowers, or (B) the advance rate of 85% of the product of the

Net Recovery Cost Percentage multiplied by the Cost of Eligible Inventory of Borrowers, plus

(iii) the balance of Cash in Deposit Accounts subject to a Blocked Account Agreement;minus

(iv) effective immediately upon notification thereof to Borrower Representative by the Collateral Agent or the Administrative Agent, any Reserves established from time to time by the Collateral Agent or the Administrative Agent in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment;

The Borrowing Base at any time shall (i) be determined by reference to the most recent Borrowing Base Certificate theretofore delivered to the Collateral Agent and the Administrative Agent with such adjustments as Administrative Agent or Collateral Agent deem appropriate in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment to assure that the Borrowing Base is calculated in accordance with the terms of this Agreement and (ii) be computed no less than monthly; provided that the Borrower Representative may compute the Borrowing Base more frequently (but in no event, absent consent from the Collateral Agent, more frequently than weekly), which Borrowing Base shall become effective upon delivery of a Borrowing Base Certificate to the Administrative Agent and the Collateral Agent; and

(b) the maximum amount of secured Indebtedness under the Credit Agreement (as defined in the Senior Note Indenture) that is permitted by Sections 4.7 and 4.8 of the Senior Note Indenture.

The Administrative Agent or the Collateral Agent may, in good faith and in the exercise of their respective reasonable (from the perspective of a secured asset-based lender) business judgment adjust Reserves.

"**Borrowing Base Certificate**" means an Officers' Certificate from Borrower Representative, substantially in the form of (or in such other form as may, from time to time, be mutually agreed upon by Borrower Representative, Collateral Agent and Administrative Agent), and containing the information prescribed by Exhibit L, delivered to the Administrative Agent and the Collateral Agent setting forth Borrower Representative's calculation of the Borrowing Base.

"**Business Day**" means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the States of New York or Wisconsin or is a day on which banking institutions located in either such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted Eurodollar Rate or any Eurodollar Rate Loans, the term "**Business Day**" shall mean any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent

ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"**Cash**" means money, currency or a credit balance in any demand or deposit account.

"**Cash Equivalents**" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit, time deposits or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (v) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"**Certificate re Non-Bank Status**" means a certificate substantially in the form of Exhibit F.

"**Change of Control**" means, at any time, (i) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) other than Sponsor beneficially owns, directly or indirectly, more than 35%, on a fully diluted basis, of the outstanding Capital Stock (measured only by voting power) of Holdings entitled (without regard to the occurrence of any contingency) to vote for the election of members of the board of directors (or similar governing body) of Holdings, unless Sponsor beneficially owns and controls, on a fully diluted basis, more of the outstanding Capital Stock (measured only by voting power) of Holdings entitled (without regard to the occurrence of any contingency) to vote for the election of members of the board of directors (or similar governing body) of Holdings than any other Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act); or (ii) Holdings shall cease to beneficially own and control 100% on a fully diluted basis of the economic and voting interests in the Capital Stock of Company.

"**Change in Law**" has the meaning assigned to that term in Section 2.18(a).

"**Closing Date**" means May 21, 2007.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"**Collateral Access Agreement**" shall mean a Collateral Access Agreement, substantially in the form of Exhibit M, or such other form as may reasonably be acceptable to the Administrative Agent and Collateral Agent.

"**Collateral Agent**" has the meaning assigned to that term in the preamble hereto.

"**Collateral Documents**" means the Pledge and Security Agreement, the Mortgages, the Blocked Account Agreements, the Intercreditor Agreement and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to Collateral Agent, for the benefit of Lenders, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations (or to perfect any Liens so granted).

"**Collection Account**" has the meaning assigned to such term in Section 5.15(a).

"**Commitment**" means any Revolving Loan Commitment.

"**Company**" has the meaning assigned to that term in the preamble hereto.

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit C.

"**Consolidated Adjusted EBITDA**" means, for any period, an amount determined for Company and its Subsidiaries on a consolidated basis equal to the total of (a) Consolidated Net Income, plus (b) the sum, without duplication, of each of the following to the extent deducted in the calculation of Consolidated Net Income for such period (i) Consolidated Interest Expense and non-Cash interest expense, (ii) provisions for taxes based on income, (iii) total depreciation expense, (iv) total amortization expense (including amortization of goodwill, other intangibles, and financing fees and expenses), (v) non-cash impairment charges, (vi) non-cash expenses resulting from the grant of stock and stock options and other compensation to management personnel of Company and its Subsidiaries pursuant to a written incentive plan or agreement, (vii) other non-Cash items that are unusual or otherwise non-recurring items, (viii) expenses or fees under the Management Services Agreement, as in effect on December 16, 2004 including any payments made under the Management Services Agreement and comprising all or any portion of the Qualifying IPO Payment, (ix) any extraordinary losses and non-recurring charges during any period (including severance, relocation costs, one-time compensation charges and losses or charges associated with Interest Rate Agreements), (x) restructuring charges or reserves (including costs related to closure of Facilities), (xi) any transaction costs incurred in connection with the issuance of Securities or any refinancing transaction, in each case whether or not such transaction is consummated (xii) any fees and expensed related to any Permitted Acquisitions and (xiii) fees, expenses and other transaction costs incurred by Company and its Subsidiaries during such period in connection with the transactions contemplated by the First Amendment, the Second Amendment to Term Loan Facility and the Qualifying IPO plus (c) solely for the purpose of determining compliance

with the financial covenant set forth in Section 6.8(a), and not for any other purpose, the Financial Performance Covenant Cure Amountminus (d) the sum, without duplication, of (i) non-Cash items increasing Consolidated Net Income for such period that are unusual or otherwise non-recurring items, (ii) cash payments made during such period reducing reserves or liabilities for accruals made in prior periods but only to the extent such reserves or accruals were added back to "Consolidated Adjusted EBITDA" in a prior period pursuant to clause (b)(vii) or (b)(viii) above, and (iii) Restricted Payments made during such period to Holdings pursuant to Section 6.5(c)(i) (other than any such Restricted Payments made to Holdings pursuant to Section 6.5(c)(i) for the purpose of paying fees, expenses and other transaction costs paid in cash during such period in connection with the transactions contemplated by the First Amendment, the Second Amendment to Term Loan Facility and the Qualifying IPO).

"**Consolidated Capital Expenditures**" means, for any period, the aggregate of all expenditures of Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of Company and its Subsidiaries, but excluding expenditures constituting the purchase price for Permitted Acquisitions and amounts constituting Net Asset Sale Proceeds and Net Insurance/Condemnation Proceeds which are reinvested in the business of Company and its Subsidiaries in accordance with Section 2.13(a) or Section 2.13(b), respectively, by Company and its Subsidiaries during such period.

"**Consolidated Coverage Ratio**" on any date of determination (the "**Transaction Date**") means the ratio, on a *pro forma* basis, of (a) the aggregate amount of Consolidated Adjusted EBITDA for the Test Period to (b) the aggregate Consolidated Fixed Charges during the Test Period; *provided*, that for purposes of such calculation: (1) Permitted Acquisitions which occurred during the Test Period or subsequent to the Test Period and on or prior to the Transaction Date shall be assumed to have occurred on the first day of the Test Period, (2) transactions giving rise to the need to calculate the Consolidated Coverage Ratio and the application of the proceeds therefrom (except as otherwise provided in this definition) shall be assumed to have occurred on the first day of the Test Period, (3) the incurrence of any Indebtedness (including the issuance of any Disqualified Capital Stock) during the Test Period or subsequent to the Test Period and on or prior to the Transaction Date (and the application of the proceeds therefrom to the extent used to refinance or retire other Indebtedness) (other than ordinary working capital borrowings) shall be assumed to have occurred on the first day of the Test Period, (4) the permanent repayment of any Indebtedness (including the redemption of any Disqualified Capital Stock) during the Test Period or subsequent to the Test Period and on or prior to the Transaction Date (other than ordinary working capital borrowings) shall be assumed to have occurred on the first day of the Test Period, (5) the Consolidated Fixed Charges attributable to interest on any Indebtedness or dividends on any Disqualified Capital Stock bearing a floating interest (or dividend) rate shall be computed on a *pro forma* basis as if the average rate in effect from the beginning of the Test Period to the Transaction Date had been the applicable rate for the entire period, unless Company or any of its Subsidiaries is a party to a Hedge Agreement (which shall remain in effect for the 12-month period immediately following the Transaction Date) that has the effect of fixing the interest rate on the date of computation, in which case such rate (whether higher or lower) shall be used, and (6) amounts attributable to operations or businesses permanently discontinued or disposed of prior to the Transaction Date,

shall be excluded, except, in the case of a determination of Consolidated Fixed Charges, only to the extent that the obligations giving rise to such Consolidated Fixed Charges would no longer be obligations contributing to Consolidated Fixed Charges subsequent to the Transaction Date.

"**Consolidated Fixed Charges**" means, for any period, the sum, without duplication, of the amounts determined for Company and its Subsidiaries on a consolidated basis equal to (i) Consolidated Interest Expense for such period, (ii) scheduled payments for such period of principal on Consolidated Total Debt, (iii) Consolidated Capital Expenditures for such period other than those financed with secured Indebtedness permitted by Sections 6.1 and 6.2 or made or incurred pursuant to Section 6.8(b)(ii), (iv) the portion of taxes based on income actually paid in cash during such period by Company or any of its Subsidiaries whether for such period or any other period and (v) Restricted Payments permitted under Section 6.5(c)(iii) and which are paid in cash during such period.

"**Consolidated Interest Expense**" means, for any period, (i) total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) payable in cash of Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Company and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements, but excluding, however, any amounts referred to in Section 2.10(d) payable on or before the Closing Date and amounts with respect to the termination of Interest Rate Agreements entered into within 90 days of the Closing Date, minus (ii) the aggregate amount of interest income of Company and its Subsidiaries during such period paid in cash.

"**Consolidated Net Income**" means, for any period, (i) the net income (or loss) of Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) (a) the income (or loss) of any Person (other than a Subsidiary of Company) in which any other Person (other than Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Company or any of its Subsidiaries by such Person during such period, (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Company or is merged into or consolidated with Company or any of its Subsidiaries or that Person's assets are acquired by Company or any of its Subsidiaries, (c) the income of any

Subsidiary of Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (e) (to the extent not included in clauses (a) through (d) above) any net extraordinary gains or net extraordinary losses.

"Consolidated Secured Debt" means, as at any date of determination, the Consolidated Total Debtof Company and its Subsidiaries determined on a consolidated basis (and without duplication) in accordance with GAAP that is secured by Liens on any of the assets of the Company or any of its Subsidiaries.

"**Consolidated Total Debt**" means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Company and its Subsidiaries determined on a consolidated basis in accordance with GAAP; provided, that the amount of revolving Indebtedness to be included at the date of determination shall be equal to the average of the balances of such revolving Indebtedness as of the end of each of the prior four calendar quarters (except that with respect to the first four calendar quarters after the Closing Date, the amount of revolving Indebtedness to be included shall be based on the average of the quarter end balances from the Closing Date through the date of determination).

"**Contractual Obligation**" means, as applied to any Person, any provision of any indenture, mortgage, deed of trust, or other contract, undertaking, agreement or other instrument to which that Person is a party or to which such Person or any of its properties is subject.

"**Contributing Guarantors**" has the meaning assigned to that term in Section 7.2.

"**Conversion/Continuation Date**" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"**Conversion/Continuation Notice**" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"**Cost**" means, as determined by Collateral Agent in good faith, with respect to Inventory, the lower of (a) landed cost computed on a first-in first-out basis in accordance with GAAP or (b) market value; provided, that for purposes of the calculation of the Borrowing Base, (i) the Cost of the Inventory shall not include: (A) the portion of the cost of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Credit Party or (B) write-ups or write-downs in cost with respect to currency exchange rates, and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent Inventory Appraisal which has been received and approved by Collateral Agent in its reasonable discretion.

"**Counterpart Agreement**" means a Counterpart Agreement substantially in the form of Exhibit H delivered by a Credit Party pursuant to Section 5.10.

"**Credit Date**" means the date of a Credit Extension.

"**Credit Document**" means any of this Agreement, the Notes, if any, the Collateral Documents, any documents or certificates executed by Borrower Representative in favor of Issuing Bank relating to Letters of Credit, and all other documents, instruments or agreements executed and delivered by a Credit Party for the benefit of any Agent, Issuing Bank or any Lender in connection herewith.

"**Credit Extension**" means the making of a Loan or the issuing of a Letter of Credit.

"**Credit Party**" means each Person (other than any Agent, Issuing Bank or any Lender or any other representative thereof) from time to time party to a Credit Document.

"**Cumulative Interest Expense**" means the aggregate amount (without duplication and determined in each case in accordance with GAAP) of (A) interest expensed or capitalized, paid, accrued, or scheduled to be paid or accrued (including, in accordance with the following sentence, interest attributable to Capital Leases and Attributable Indebtedness) of the Company and its Subsidiaries during such period, including (I) amortization of debt issuance costs, original issue discount, debt discounts or premium and other financing fees and expenses and non-cash interest payments or accruals on any Indebtedness, (II) the interest portion of all deferred payment obligations of the Company and its Subsidiaries, and (III) all commissions, discounts and other fees and charges owed by the Company and its Subsidiaries with respect to bankers' acceptances and letters of credit financings and Hedge Agreements, in each case to the extent attributable to such period, and (B) the amount of all cash dividends paid by the Company or any of its Subsidiaries in respect of preferred stock (other than by Subsidiaries of the Company to the Company or its wholly owned Subsidiaries).

"**Currency Agreement**" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Holdings' and its Subsidiaries' operations and not for speculative purposes.

"**Current Twelve-Month Period**" has the meaning assigned to such term in Section 8.3.

"**DD Finance**" has the meaning assigned to that term in the preamble.

"**Default**" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"**Default Excess**" means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender's Pro Rata Share of the aggregate outstanding principal amount of Loans of all Lenders (calculated as if all Defaulting Lenders (other than such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Loans of such Defaulting Lender.

"**Default Period**" means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default and ending on the earliest of the following dates: (i) the date on which all Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (ii) the date on which (a) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non-pro rata application of any voluntary or mandatory prepayments of the Loans in accordance with the terms of Section 2.12 or Section 2.13 or by a combination thereof) and (b) such Defaulting Lender shall have delivered to Company and Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitments, and (iii) the date on which Company, Administrative Agent and Requisite Lenders waive all Funding Defaults of such Defaulting Lender in writing.

"**Defaulting Lender**" has the meaning assigned to that term in Section 2.21.

"**Defaulted Loan**" has the meaning assigned to that term in Section 2.21.

"**Deposit Account**" means each checking or other demand deposit account maintained by any of the Credit Parties other than any Excluded Deposit Accounts. All funds in each Deposit Account shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agents and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any Deposit Account.

"**Disqualified Capital Stock**" means with respect to any Person, (a) Capital Stock of such Person that, by its terms or by the terms of any security into which it is convertible, exercisable or exchangeable, is, or upon the happening of an event or the passage of time or both would be, required to be redeemed or repurchased including at the option of the holder thereof by such Person or any of its Subsidiaries, in whole or in part, on or prior to 91 days following the Maturity Date and (b) any Capital Stock of any Subsidiary of such Person other than any common equity with no preferences, privileges, and no redemption or repayment provisions. Notwithstanding the foregoing, any Capital Stock of the Company, DD Finance or Fisher that would constitute Disqualified Capital Stock solely because the holders thereof have the right to require the Company, DD Finance or Fischer to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Capital Stock if the terms of such Capital Stock provide that the Company, DD Finance or Fisher may not repurchase or redeem any such Capital Stock pursuant to such provisions prior to the prepayment of the Loans as are required by this Agreement.

"**Documentation Agent**" has the meaning assigned to that term in the preamble hereto.

"**Dollars**" and the sign "**$**" mean the lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**Eligible Accounts**" has the meaning assigned to such term in Section 2.11(a).

"**Eligible Assignee**" means (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and Sponsor and any fund or account affiliated with Sponsor (provided that, none of the Ares Limited Partnership, the Limited Partnerships, and to the extent holding any Capital Stock in Holdings, any other Ares Group Investor or Aurora Group Investor, shall be deemed to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents) and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses; provided, no Affiliate of Holdings (other than any existing Lender, Affiliate of such Lender, Sponsor or any fund or account affiliated with Sponsor) shall be an Eligible Assignee.

"**Eligible Inventory**" has the meaning assigned to such term in Section 2.11(b).

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claim**" means any investigation, written notice, written notice of violation, written claim, action, suit, proceeding, demand, abatement order or other written order or written directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, land use or the protection of the environment, in any manner applicable to Holdings or any of its Subsidiaries or any Facility.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"**ERISA Affiliate**" means, as applied to any Person on or after the date of the closing of the transactions contemplated by the Purchase Agreement, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member.

"**ERISA Event**" means (i) a "reportable event" within the meaning of Section 4043(c) of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan; (vi) the imposition, or the

occurrence of any events or condition that could reasonably be expected to result in the imposition, of liability on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the occurrence of an act or omission which could give rise to the imposition on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan (which fines, penalties, taxes or related charges, for purposes of Section 4.18, shall be material); (viii) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan or the assets thereof, or against Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (ix) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (x) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

"**Eurodollar Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

"**Event of Default**" means each of the conditions or events set forth in Section 8.1.

"**Excess Availability**" means, at any time, (a) the lesser of (i) the aggregate Revolving Loan Commitments of all of the Lenders and (ii) the Borrowing Base on the date of determination *less* (b) all outstanding Loans and Letter of Credit Usage.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"**Excluded Deposit Accounts**" means, collectively, (a) Deposit Accounts established solely for the purpose of funding payroll and trust accounts and funded solely with amounts necessary to cover then outstanding payroll liabilities and amounts required to be retained in such trust accounts, as well as minimum balance requirements; (b) Deposit Accounts with amounts on deposit that, when aggregated with the amounts on deposit in all other Deposit Accounts for which a Control Agreement has not been obtained (other than those specified in clause (a) and (c)), do not at any time exceed $4,000,000; (c) Deposit Accounts, with amounts on deposit which in the aggregate that do not at any time exceed $1,000,000, held at a financial institution that is not, for United Stated federal income tax purposes (i) an individual who is a citizen or resident of the United States or (ii) a corporation, partnership or other entity treated as a corporation or partnership created or organized in or under the laws of the United States, or any political subdivision thereof; (d) zero balance disbursement accounts; and (e) Deposit Accounts, with amounts on deposit which in the aggregate do not at any time exceed $500,000, the sole proceeds of which are funds received by a Loan Party from credit card sales; provided that, in each of the foregoing cases, if reasonably requested by the Collateral Agent or the

Administrative Agent, the Borrower Representative shall provide such Agent with periodic updates of the account numbers and names of all financial institutions where such Deposit Accounts are maintained.

"**Existing Credit Agreement**" means the Amended and Restated Credit and Guaranty Agreement dated as of December 16, 2004, by and among Holdings, the Borrower Representative, certain subsidiaries of the Borrower Representative as guarantors and Credit Suisse as administrative agent, as previously amended, restated, amended and restated, supplemental or modified prior to the Closing Date.

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Holdings or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**Fair Share**" has the meaning assigned to that term in Section 7.2.

"**Fair Share Contribution Amount**" has the meaning assigned to that term in Section 7.2.

"**Federal Funds Effective 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, (i) 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 (ii) 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 charged to Administrative Agent, in its capacity as a Lender, on such day on such transactions as determined by Administrative Agent.

"**Financial Performance Covenant**" has the meaning assigned to such term in Section 8.3.

"**Financial Performance Covenant Cure Amount**" has the meaning assigned to such term in Section 8.3.

"**Financial Performance Covenant Cure Notice**" has the meaning assigned to such term in Section 8.3.

"**Financial Performance Covenant Cure Right**" has the meaning assigned to such term in Section 8.3.

"**Financial Plan**" has the meaning assigned to that term in Section 5.1(i).

"**First Amendment**" means Amendment No. 1 to Credit and Guaranty Agreement, dated as of April 16, 2010 among Holdings, the Company, Fisher, DD Finance and the Lenders party thereto.

"**First Amendment Effective Date**" means the date on which the First Amendment became effective in accordance with its terms.

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Holdings and its Subsidiaries ending on December 31 of each calendar year.

"**Fisher**" has the meaning assigned to that term in the preamble.

"**Fixed Charge Coverage Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit O.

"**Fixed Charge Coverage Ratio**" means the ratio of (i) the aggregate amount of Consolidated Adjusted EBITDA for the Test Period, to (ii) the aggregate Consolidated Fixed Charges during the Test Period.

"**Flood Hazard Property**" means any Real Estate Asset subject to a mortgage in favor of Collateral Agent, for the benefit of the Lenders, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Funding Default**" has the meaning assigned to that term in Section 2.21.

"**Funding Guarantors**" has the meaning assigned to that term in Section 7.2.

"**Funding Notice**" means a notice substantially in the form of Exhibit A-1.

"**GAAP**" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Grantor**" has the meaning assigned to that term in the Pledge and Security Agreement.

"**Guaranteed Obligations**" has the meaning assigned to that term in Section 7.1.

"**Guarantor**" means each of (i) Holdings (ii) each Domestic Subsidiary of Holdings (other than any Domestic Subsidiary that is a Borrower) (iii) to the extent no adverse tax consequences to Company would result therefrom, each Foreign Subsidiary of Holdings.

"**Guarantor Subsidiary**" means each Guarantor other than Holdings.

"**Guaranty**" means the guaranty of each Guarantor set forth in Section 7.

"**Hazardous Materials**" means any chemical, material, waste or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority.

"**Hazardous Materials Activity**" means any past, current or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, presence, Release, threatened Release, discharge, placement, generation, transportation, processing, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"**Hedge Agreement**" means an Interest Rate Agreement or a Currency Agreement entered into with a Lender Counterparty.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"**Holdings**" has the meaning assigned to that term in the preamble hereto.

"**Holdings Equity Proceeds**" means the proceeds of any sale of Capital Stock (other than Disqualified Capital Stock) of Holdings following the First Amendment Effective Date (and excluding any proceeds of the Qualifying IPO), in each case, only to the extent that (i) such proceeds are held by Holdings in the form of cash or Cash Equivalents, (ii) such proceeds are not contributed by Holdings to the Company or any Subsidiary and (iii) the Restricted Payment Amount is not increased in respect of such proceeds.

"**Increased-Cost Lenders**" has the meaning assigned to that term in Section 2.22.

"**Indebtedness**" as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money (excluding accounts payable which are classified as current

liabilities in accordance with GAAP and accrued expenses in each case incurred in the ordinary course of business); (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA or with respect to earn-outs incurred and paid when due in connection with Permitted Acquisitions), which purchase price is due more than six months from the date of incurrence of the obligation in respect thereof; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (ix) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefore, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; (x) all net payment obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including, without limitation, any Interest Rate Agreement and Currency Agreement, whether entered into for hedging or speculative purposes; (xi) the principal balance outstanding under any synthetic lease, tax retention lease, off-balance sheet loan or similar off-balance sheet financing product; and (xii) the indebtedness of any partnership or Joint Venture in which such Person is a general partner or a joint venturer except to the extent that the terms of such indebtedness provide that such indebtedness is nonrecourse to such Person.

"**Indemnified Liabilities**" has the meaning assigned to that term in Section 10.3(a).

"**Indemnitee**" has the meaning assigned to that term in Section 10.3(a).

"**Intellectual Property**" means all patents, trademarks, service marks, tradenames, domain names, trade secrets, copyrights, technology, know-how and processes used in or necessary for the conduct of the business of Company and its Subsidiaries.

"Intercreditor Agreement" shall mean the Intercreditor Agreement in the form of Exhibit N.

"**Interest Payment Date**" means with respect to (i) any Base Rate Loan, the last Business Day in each of March, June, September and December of each year through the final maturity date of such Loan; and (ii) any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three

months "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"**Interest Period**" means, in connection with a Eurodollar Rate Loan, an interest period of one-, two-, three- or six-months, as selected by Borrower Representative in the applicable Funding Notice or Conversion/Continuation Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c), of this definition, end on the last Business Day of a calendar month; and (c) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Loan Commitment Termination Date.

"**Interest Rate Agreement**" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with Holdings' and its Subsidiaries' operations and not for speculative purposes.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"**Inventory**" shall mean all "inventory," as such term is defined in the UCC as in effect on the date hereof in the State of New York, wherever located, in which any Person now or hereafter has rights.

"**Inventory Appraisal**" shall mean (a) on the Closing Date and thereafter until any subsequent inventory appraisal is completed and delivered pursuant to Section 5.6(b) hereof, the inventory appraisal prepared by Hilco Appraisal Services, LLC dated April 19, 2007 and (b) thereafter, the most recent inventory appraisal conducted by an independent appraisal firm satisfactory to the Collateral Agent and the Administrative Agent and delivered pursuant to Section 5.6(b) hereof.

"**Investment**" means (i) any direct or indirect purchase or other acquisition by Holdings or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (including any Subsidiary of Holdings); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Holdings from any Person other than Company or any Guarantor Subsidiary, of any Capital Stock of such Subsidiary; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by Holdings or any of its Subsidiaries to any

other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto minus the amount of any return of capital with respect to such Investment, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"**Investment Conditions**" means (i) the Consolidated Coverage Ratio is not less than 2.0 to 1.0 and (ii) the Leverage Ratio is not greater than 5.0 to 1.0.

"**Issuance Notice**" means an Issuance Notice substantially in the form of Exhibit A-3.

"**Issuing Bank**" means (i) Credit Suisse as Issuing Bank hereunder, together with its permitted successors and assigns in such capacity and (ii) any other Lender that is a commercial bank acceptable to Company and Administrative Agent.

"**Joint Venture**" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"**Lender**" has the meaning assigned to that term in the preamble hereto, and shall include any other Person that becomes a party hereto pursuant to an Assignment Agreement.

"**Lender Counterparty**" means each Lender or any Affiliate of a Lender counterparty to a Hedge Agreement or Banking Service Agreement (including any Person who is a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into a Hedge Agreement or Banking Service Agreement, ceases to be a Lender).

"**Letter of Credit**" means a commercial or standby letter of credit issued or to be issued by Issuing Bank pursuant to this Agreement.

"**Letter of Credit Sublimit**" means the lesser of (i) $5,000,000 and (ii) the aggregate unused amount of the Revolving Loan Commitments then in effect.

"**Letter of Credit Usage**" means, as at any date of determination, the sum of (i) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding, and (ii) the aggregate amount of all drawings under Letters of Credit honored by Issuing Bank and not theretofore reimbursed by or on behalf of Company.

"**Leverage Ratio**" means the ratio as of the date of determination of (i) Consolidated Total Debt, less unrestricted Cash and Cash Equivalents of Company and its Subsidiaries as of such day in excess of $1,000,000, the contents of which are in a Blocked Account, to (ii) Consolidated Adjusted EBITDA for the Test Period most recently ended.

"**Lien**" means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional

sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

"**Liquidity Event**" means Excess Availability of the Borrowers is less than $6.0 million.

"**Liquidity Event Cure**" has the meaning assigned to such term in Section 8.2.

"**Liquidity Event Cure Amount**" has the meaning assigned to such term in Section 8.2.

"**Liquidity Event Cure Notice**" has the meaning assigned to such term in Section 8.2.

"**Liquidity Event Cure Right**" has the meaning assigned to such term in Section 8.2.

"**Loan**" means a Revolving Loan and a Swing Line Loan.

"**Management Services Agreement**" means the Amended and Restated Management Services Agreement dated April 12, 2004 between Holdings and Sponsor, as it may be amended, supplemented or otherwise modified from time to time.

"**Margin Stock**" has the meaning assigned to that term in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"**Material Adverse Effect**" means a material adverse effect upon (i) the business, operations, properties, assets or condition (financial or otherwise) of Holdings and its Subsidiaries taken as a whole; (ii) the ability of any Credit Party to perform its Obligations; (iii) the legality, validity, binding effect or enforceability against a Credit Party of a Credit Document to which it is a party; or (iv) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

"**Maturity Date**" means May 21, 2012.

"**Maximum Restricted Payment Amount**" means, for any four Fiscal Quarter period, (1) $24,000,000, if Consolidated Adjusted EBITDA is greater than or equal to $30,000,000 and less than or equal to $40,000,000 for the Test Period, (2) $12,000,000, if Consolidated Adjusted EBITDA is greater than or equal to $27,000,000 but less than $30,000,000 for the Test Period, (3) $8,000,000, if Consolidated Adjusted EBITDA is greater than or equal to $25,000,000 but less than $27,000,000 for the Test Period, and (4) $0, if Consolidated Adjusted EBITDA is less than $25,000,000 for the Test Period.

"**Moody's**" means Moody's Investor Services, Inc.

"**Mortgage**" means a Mortgage substantially in the form of Exhibit J, as it may be amended, supplemented or otherwise modified from time to time.

"**Multiemployer Plan**" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) or Section 4001(a)(3) of ERISA.

"**Net Asset Sale Proceeds**" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by Holdings or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including, without limitation, (a) income taxes estimated in good faith by the seller thereof to be payable by the seller as a result of any gain recognized in connection with such Asset Sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, (c) brokerage fees and legal expenses incurred directly attributable to such Asset Sale; and (d) any reserves required to be established by the seller thereof in accordance with GAAP against liabilities reasonably anticipated and directly attributable to the Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under indemnification obligations associated with such Asset Sale.

"**Net Insurance/Condemnation Proceeds**" means an amount equal to: (i) any Cash payments or proceeds received by Holdings or any of its Subsidiaries (a) under any casualty insurance policy in respect of a covered loss thereunder or (b) as a result of the taking of any assets of Holdings or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Holdings or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Holdings or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including income taxes estimated in good faith by the seller thereof to be payable as a result of any gain recognized in connection therewith.

"**Net Recovery Cost Percentage**" means the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the recovery on the aggregate amount of the Inventory at such time on a "net orderly liquidation value" basis as set forth in the most recent Inventory Appraisal received by Collateral Agent in accordance with Section 5.6(b), net of operating expenses, liquidation expenses and commissions reasonably anticipated in the disposition of such assets, and (b) the denominator of which is the original Cost of the aggregate amount of the Inventory subject to appraisal.

"**Non-US Lender**" has the meaning assigned to that term in Section 2.19(c).

"**Note**" means a Term Note, a Revolving Loan Note or a Swing Line Note.

"**Notice**" means a Funding Notice, an Issuance Notice, or a Conversion/Continuation Notice.

"**Obligations**" means all obligations of every nature of each Credit Party from time to time owed to the Agents (including former Agents), the Lenders, Issuing Bank or any of them, or to any Lender Counterparties, under any Credit Document or Hedge Agreement or with respect to any Banking Services Agreement (including, without limitation, with respect to a Hedge Agreement or Banking Services Agreement, obligations owed thereunder to any person who was a Lender or an Affiliate of a Lender at the time such Hedge Agreement or Banking Services Agreement was entered into or initiated, as the case may be), whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, payments for early

termination of Hedge Agreements or Banking Services Agreements, fees, expenses, indemnification or otherwise.

"**Obligee Guarantor**" has the meaning assigned to that term in Section 7.7.

"**Organizational Documents**" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any Employee Benefit Plan which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Perfection Deliverables**" means, with respect to any Credit Party, or any Person that becomes a Credit Party pursuant to Section 5.10 and to the extent required to be delivered under such Section:

(i) evidence satisfactory to Collateral Agent of the compliance by such Credit Party of its obligations under the Pledge and Security Agreement and the other Collateral Documents (including, without limitation, its obligations (A) to execute and deliver (x) UCC financing statements, (y) originals of securities, instruments and chattel paper and (z) any agreements governing deposit and/or securities accounts as provided therein, and (B) to file intellectual property security agreements with the United States Patent and Trademark Office and the United States Copyright Office);

(ii) (A) to the extent required to be delivered by the Collateral Agent, the results of searches, by Persons satisfactory to Collateral Agent, of all effective UCC financing statements (or equivalent filings), fixture filings and all judgment and tax lien filings which may have been made with respect to any personal or mixed property of such Credit Party, and of filings with the United States Patent and Trademark Office and the United States Copyright Office, together with copies of all such filings disclosed by such searches, and (B) UCC termination statements (or similar documents), releases to be filed with the United States Patent and Trademark Office and the United States Copyright Office, and other filings duly executed by all applicable Persons for filing in all applicable jurisdictions and offices as may be necessary to terminate any effective UCC financing statements (or equivalent filings) and other filings disclosed in such searches (other than any such financing statements in respect of Permitted Liens);

(iii) to the extent required to be delivered by the Collateral Agent, opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in the Collateral of such Credit Party and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

(iv) evidence that such Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including without limitation, any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to Section 6.1(b)) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

"**Performance Level**" means, as of the date of determination, Performance Level I or Performance Level II, as identified by reference to Average Daily Excess Availability in effect on such date as set forth below:

Performance Level	**Average Daily Excess Availability**
Level I	Average Daily Excess Availability is greater than $25,000,000
Level II	Average Daily Excess Availability is less than or equal to $25,000,000

For purposes of this definition, Average Daily Excess Availability shall be determined on the basis of the most recent Compliance Certificate delivered pursuant to Section 5.1(d) hereof and any change in the Performance Level shall be effective one Business Day after the date on which Administrative Agent receives such certificate; provided, that until Holdings has delivered to Administrative Agent such certificate pursuant to Section 5.1(d) hereof in respect of Fiscal Year 2007, Average Daily Excess Availability shall be deemed to be at Level II; provided, further, that for so long as Holdings has not delivered such Compliance Certificate when due pursuant to Section 5.1(d) hereof Average Daily Excess Availability shall be deemed to be at Level II until such certificate is delivered to Administrative Agent.

"**Periodic Dividend Amount**" means (x) $16,000,000 minus (y) the sum of the aggregate amount of Restricted Payments made pursuant to Section 6.5(d)(i) during the Fiscal Quarter in which the subject Restricted Payment is to be paid and the three Fiscal Quarters most recently ended.

"**Permitted Acquisition**" means any acquisition by Company or any of its wholly-owned Guarantor Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided, that: (i) immediately prior to, and after giving effect thereto, no Liquidity Event or Default or Event of Default shall have occurred and be continuing or would result therefrom; (ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations; (iii) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Subsidiary of Company in connection with such acquisition shall be owned not less than 80% by Company or a Guarantor Subsidiary thereof, and Company shall have taken, or caused to be taken, each of the actions (and within the time periods) set forth in Sections 5.10 and/or 5.11, as applicable; (iv) any Person or assets or division as acquired in accordance herewith shall be in same business or lines of business in which Company and/or its Subsidiaries are engaged as of the Closing Date or any business reasonably related thereto; and (v) each such Permitted Acquisition shall be effectuated pursuant to the terms of a consensual merger or stock purchase agreement or other consensual acquisition agreement between the Company or the applicable Subsidiary and the applicable seller or Person being so acquired .

"**Permitted Cure Security**" means Capital Stock of Holdings that is not Disqualified Capital Stock.

"**Permitted Liens**" means each of the Liens permitted pursuant to Section 6.2.

"**Permitted Refinancing**" means, with respect to any Indebtedness, extensions, renewals, refinancings or replacements of such Indebtedness provided that such extensions, renewals, refinancings or replacements (i) are on terms and conditions (including the terms and conditions of any guarantees of or other credit support for such Indebtedness) not materially less favorable taken as a whole to Company and its Subsidiaries, the Agents or the Lenders than the terms and conditions of the Indebtedness being extended, renewed, refinanced or replaced, (ii) do not add as an obligor any Person that would not have been an obligor under the Indebtedness being extended, renewed replaced or refinanced, (iii) do not result in a greater principal amount or shorter remaining average life to maturity than the Indebtedness being extended, renewed replaced or refinanced and (iv) are not effected at any time when a Default or Event of Default has occurred and is continuing or would result therefrom.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Phase I Report**" means, with respect to any Facility, a report that (i) conforms to the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527, (ii) was conducted no more than six months prior to the date such report is required to be delivered hereunder, by one or more environmental consulting firms reasonably satisfactory to Administrative Agent, (iii) includes an assessment of asbestos-containing materials at such Facility, (iv) is accompanied by (a) an estimate of the reasonable worst-case cost of investigating and remediating any Hazardous Materials Activity identified in the Phase I Report as giving rise to an actual or potential material violation of any Environmental Law or as presenting a material risk of giving rise to a material Environmental Claim, and (b) a current compliance audit setting forth an assessment of Holdings', its Subsidiaries' and such Facility's current and past compliance with Environmental Laws and an estimate of the cost of rectifying any non-compliance with current Environmental Laws identified therein and the cost of compliance with reasonably anticipated future Environmental Laws identified therein.

"**Pledge and Security Agreement**" means the Pledge and Security Agreement dated as of the Closing Date by Borrowers and each Guarantor, substantially in the form of Exhibit I, as it may be amended, supplemented or otherwise modified from time to time.

"**Prime Rate**" means the rate of interest per annum announced from time to time by Credit Suisse as its prime commercial lending rate in effect at its principal office in New York City. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Credit Suisse or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Principal Office**" means, for each of Administrative Agent, Swing Line Lender and Issuing Bank, such Person's "Principal Office" as set forth on Appendix B, or such other

office as such Person may from time to time designate in writing to Borrower Representative, Administrative Agent and each Lender.

"**Projections**" has the meaning assigned to that term in Section 4.8.

"**Pro Rata Share**" means: with respect to all payments, computations and other matters relating to the Revolving Loan Commitment or Revolving Loans of any Lender or any Letters of Credit issued or participations purchased therein by any Lender or any participations in any Swing Line Loans purchased by any Lender, the percentage obtained by dividing (a) the Revolving Exposure of that Lender by (b) the aggregate Revolving Exposure of all Lenders. For all other purposes with respect to each Lender, "Pro Rata Share" means the percentage obtained by dividing (A) an amount equal to the sum of the Revolving Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Revolving Exposure of all Lenders.

"**Qualifying IPO**" means the consummation of the first underwritten public offering of the Capital Stock (other than Disqualified Capital Stock) of Holdings following the Closing Date pursuant to a registration statement filed with the Securities and Exchange Commission in accordance with the Securities Act.

"**Qualifying IPO Payment**" means, concurrent with the closing of a Qualifying IPO, the one-time payment to Sponsor in connection with the termination of the Management Services Agreement in an aggregate amount not to exceed $6,000,000.

"**Qualifying Preferred Stock Redemption**" means, concurrent with the closing of a Qualifying IPO, the payment of $1,000 to Aurora Equity Partners II L.P. and $1,000 to Ares Limited Partnership in respect of the redemption of the one share of Series B Preferred Stock and Series C Preferred Stock held by Aurora Equity Partners II L.P. and the Ares Limited Partnership, respectively.

"**Qualifying Senior Notes Redemption**" means, concurrent with the closing of a Qualifying IPO, the Company and DD Finance (i) have given irrevocable and unconditional notice of redemption for all of the outstanding Senior Notes, (ii) have timely and irrevocably deposited or caused to be deposited with the trustee under the Senior Notes Indenture proceeds of a Qualifying IPO, proceeds of Additional Term Loans (as defined in the Term Loan Facility), Cash and/or proceeds of Revolving Loans sufficient to pay and discharge the entire indebtedness (including all principal, premium, if any, and accrued interest) on all outstanding Senior Notes and (iii) have satisfied all other conditions precedent to the discharge of the Senior Notes Indenture set forth in Section 8.8 of the Senior Notes Indenture.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"**Real Estate Asset Deliverables**" means, with respect to any Real Estate Asset acquired by any Credit Party, or held by any Person that becomes a Credit Party, and to the extent required to be delivered pursuant to Section 5.11:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering such Real Estate Asset;

(ii) at the request of the Collateral Agent, an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in each state in which such Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent;

(iii) at the request of the Collateral Agent, (a) ALTA mortgagee title insurance policies or unconditional commitments therefore issued by one or more title companies reasonably satisfactory to Collateral Agent with respect to such Real Estate Asset, in amounts satisfactory to the Collateral Agent with respect to such Real Estate Asset, together with a title report issued by a title company with respect thereto (each, a "**Title Policy**") and dated as of a recent date prior to the date which such Real Estate Asset is acquired or such Person becomes a Credit Party, as the case may be, and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and

substance reasonably satisfactory to Collateral Agent and (b) evidence satisfactory to Collateral Agent that such Credit Party has paid to the title company or to the appropriate governmental authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for such Real Estate Asset in the appropriate real estate records;

(iv) evidence of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, in form and substance reasonably satisfactory to Collateral Agent; and

(v) at the request of the Collateral Agent, ALTA surveys of such Real Estate Asset, certified to Collateral Agent and dated as of a recent date which such Real Estate Asset is acquired or such Person becomes a Credit Party, as the case may be.

"**Refunded Swing Line Loans**" has the meaning assigned to that term in Section 2.2(b)(iv).

"**Register**" has the meaning assigned to that term in Section 2.6(b).

"**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"**Reimbursement Date**" has the meaning assigned to that term in Section 2.3(d).

"**Related Fund**" means, with respect to any Lender that is an investment fund, any other investment fund or similar investment vehicle that invests in commercial loans and that is managed or advised by (i) the Lender, (ii) an Affiliate of Lender or (iii) the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Related Lender Assignment**" has the meaning assigned to that term in Section 10.6(c).

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

"**Replacement Lender**" has the meaning assigned to that term in Section 2.22.

"**Requisite Lenders**" means one or more Lenders having or holding Revolving Exposure and representing more than 50% of the sum of the aggregate Revolving Exposure of all Lenders.

"**Reserves**" shall mean reserves established against the Borrowing Base that the Collateral Agent or Administrative Agent may, in good faith and in the exercise of its respective reasonable (from the perspective of a secured asset-based lender) business judgment, establish from time to time (including, without limitation, (i) reserves for rent at locations leased by any Borrower for which no Collateral Access Agreement is in effect, (ii) reserves for consignee's, warehousemen's and bailee's charges at consignor, warehouse and bailee locations for which Collateral Access Agreements, bailee waivers or mortgagor waivers, as appropriate, have not been obtained and at which Inventory is located, (iii) reserves for customs charges and shipping charges related to any Inventory in transit, (iv) reserves for obligations under Hedge Agreements, (v) reserves for contingent liabilities of any Credit Party, (vi) reserves for uninsured losses of any Credit Party, (vii) reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation,(viii) reserves for taxes, fees,

assessments, and other governmental charges) and (ix) reserves for obligations under Banking Services Agreements.

"**Restricted Payment**" means (i) any dividend or other distribution (including, for the avoidance of doubt, any payment pursuant to Section 6.5(d)), direct or indirect, on account of any shares of any class of stock (or of any other Capital Stock) of Holdings or Company now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock (or of any other Capital Stock) of Holdings or Company now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock (or of any other Capital Stock) of Holdings or Company now or hereafter outstanding; (iv) management or similar fees payable to Sponsor or any of its Affiliates and (v) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Indebtedness permitted pursuant to Sections 6.1(b), 6.1(e) (in respect of Indebtedness incurred under Sections 6.1(b), 6.1(k) (to the extent constituting subordinated Indebtedness) or 6.1(m)), 6.1(k) (to the extent constituting subordinated Indebtedness) or 6.1(m). Notwithstanding anything to the contrary contained herein, (i) the redemption of the Senior Notes pursuant to the Qualifying Senior Notes Redemption shall not be treated as a Restricted Payment for any purpose hereunder, (ii) the Qualifying IPO Payment shall not be treated as a Restricted Payment for any purpose hereunder, and (iii) the redemption by Holdings of any preferred stock of Holdings pursuant to a Qualifying Preferred Stock Redemption shall not be treated as a Restricted Payment for any purpose hereunder.

"**Restricted Payment Amount**" means, as of any date of determination, an amount set forth on the Restricted Payment Certificate delivered to the Administrative Agent no later than 10:00 a.m. (New York City time) at least 3 Business Days in advance of the payment date of the transaction giving rise to a determination of the Restricted Payment Amount (which can be less than zero), equal to (a) the difference (but not less than zero) between (i) Restricted Payment EBITDA and (ii) the product of 2.0 multiplied by Cumulative Interest Expense (determined, in each case, for the period commencing on the first day of the first full Fiscal Quarter after the Closing Date through and including the last full Fiscal Quarter (taken as one accounting period) preceding such date of determination), plus (b) 100% of the aggregate net cash proceeds received by the Company from a capital contribution or sale of Capital Stock to Holdings after the Closing Date, plus (c) except in each case, in order to avoid duplication, to the extent any such payment or proceeds have been included in the calculation of Restricted Payment EBITDA, an amount equal to the net amounts received in respect of Investments made under Section 6.7(l) or 6.7(m) in any Person resulting from cash distributions on or cash repayments of any Investments, including payments of interest on Indebtedness, dividends, repayments of loans or advances, or other distributions or other transfers of assets, in each case to Company, DD Finance, Fisher or any of their respective Subsidiaries or from the net cash proceeds from the sale of any such Investment, not to exceed, in each case, the amount of Investments previously made by Company, DD Finance, Fisher or any of their respective Subsidiaries in such Person, less the cost of disposition (and excluding Investments in Subsidiaries), minus (d) the sum of (i) the aggregate amount of Restricted Payments made

pursuant to Sections 6.5(a)(ii) (other than to the Company or a wholly-owned Subsidiary Guarantor) and 6.5(c)(iv); and (ii) (without duplication) amounts applied or utilized pursuant to Section 6.5(d)(i), Section 6.5(f), Section 6.7(l) or Section 6.7(m) or Section 6.16(d). For purposes of this definition, (i) the amount of any payment or Investment made or returned hereunder, if other than in cash, shall be the fair market value thereof, as determined in the good faith reasonable judgment of the board of directors of the Company (or similar governing body) for such payments or Investments with a value in excess of $1.0 million, and otherwise by an executive officer of the Company at the time made or returned, as applicable, (ii) interest with respect to Capital Leases shall be deemed to accrue at an interest rate reasonably determined in good faith by the Company to be the rate of interest implicit in such Capital Lease in accordance with GAAP and (iii) interest expense attributable to any Indebtedness represented by the guarantee by the Company or any of its Subsidiaries of an obligation of another Person shall be deemed to be the interest expense attributable to the Indebtedness guaranteed. Notwithstanding anything to the contrary contained herein, (i) the redemption of the Senior Notes pursuant to the Qualifying Senior Notes Redemption shall not reduce the Restricted Payment Amount for any purpose hereunder, (ii) the Qualifying IPO Payment shall not reduce the Restricted Payment Amount for any purpose hereunder, (iii) the proceeds of a Qualifying IPO shall not increase the Restricted Payment Amount for any purpose hereunder, and (iv) the redemption of preferred stock of Holdings pursuant to the Qualifying Preferred Stock Redemption shall not reduce the Restricted Payment Amount for any purpose hereunder.

"**Restricted Payment Certificate**" means a Restricted Payment Certificate substantially in the form of Exhibit K.

"**Restricted Payment EBITDA**" means, for any period and without duplication, (a) Consolidated Adjusted EBITDA for such period,plus (b) the sum of each of the following to the extent deducted in the calculation of Consolidated Net Income for such period, (i) all losses which are non-recurring, (ii) interest attributable to Attributable Indebtedness, and (iii) the amount of all dividends accrued or payable (whether or not in cash) by the Company or any of its Subsidiaries in respect of preferred stock (other than (A) dividends on Capital Stock (other than Disqualified Capital Stock) of the Company or such Subsidiary payable solely in Capital Stock (other than Disqualified Capital Stock) of the Company or such Subsidiary, as applicable, and (B) dividends by Subsidiaries of the Company to the Company or its wholly-owned Subsidiaries), plus (c) the aggregate amount of interest income of the Company and its Subsidiaries during such period paid in cash to the extent reducing Consolidated Adjusted EBITDA minus (d) all gains which are non-recurring (including any gain from the issuance or sale of any Capital Stock) to the extent included in the calculation of Consolidated Net Income for such period.

"**Revolving Loan Commitment**" means the commitment of a Lender to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit and Swing Line Loans hereunder and "**Revolving Loan Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender's Revolving Loan Commitment, if any, is set forth on Appendix A-2 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Loan Commitments as of the Closing Date is $60,000,000.

"**Revolving Loan Commitment Period**" means the period from the Closing Date to but excluding the Revolving Loan Commitment Termination Date.

"**Revolving Loan Commitment Termination Date**" means the earliest to occur of (i) the Maturity Date, (ii) the date the Revolving Loan Commitments are permanently reduced to zero pursuant to Section 2.12(b) or 2.13, and (iii) the date of the termination of the Revolving Loan Commitments pursuant to Section 8.1.

"**Revolving Exposure**" means, with respect to any Lender as of any date of determination, (i) prior to the termination of the Revolving Commitments, that Lender's Revolving Commitment, and (ii) after the termination of the Revolving Commitments, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (b) in the case of Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (net of any participations by Lenders in such Letters of Credit), (c) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (d) in the case of Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any participations therein by other Lenders), and (e) the aggregate amount of all participations therein by that Lender in any outstanding Swing Line Loans.

"**Revolving Loan**" means a Loan made by a Lender to Company pursuant to Section 2.1(a).

"**Revolving Loan Note**" means a promissory note in the form of Exhibit B-1, as it may be amended, supplemented or otherwise modified from time to time.

"**RP Conditions**" means (i) the sum of (x) the aggregate amount of Cash of the Borrowers in Deposit Accounts subject to a Blocked Account Agreement and (y) Excess Availability is at least $12,000,000; provided, that Excess Availability will be calculated without giving effect to any Cash, and (ii) the Leverage Ratio is less than 6.0 to 1.0.

"**S&P**" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

"**Second Amendment to Term Loan Facility**" means Amendment No. 2 to Term Loan Facility, dated as of April 16, 2010 among the Company and the lenders party thereto.

"**Second Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

"Secured Debt Ratio" means the ratio as of the date of determination of (i) Consolidated Secured Debt, less unrestricted Cash and Cash Equivalents of the Company and its Subsidiaries in excess of $1,000,000, the contents of which are in a Blocked Account, as of such date, to (ii) Consolidated Adjusted EBITDA for the Test Period most recently ended.

"**Secured Parties**" has the meaning assigned to that term in the Pledge and Security Agreement.

"**Section 6.5(d) Certificate**" means a certificate of an Authorized Officer (i) certifying that the conditions to the making of a Restricted Payment set forth in Section 6.5(d)(i) have been satisfied and (ii) designating the portion of such Restricted Payment made in reliance upon (x) the Periodic Dividend Amount and (y) the Restricted Payment Amount. Any such designation made pursuant to clause (ii) of the preceding sentence shall be permanent.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"**Senior Notes**" means the Senior Notes issued pursuant to the Senior Notes Indenture.

"**Senior Notes Indenture**" means that certain Indenture dated as of December 16, 2004, by and among the Company, DD Finance and U.S. Bank National Association, as Indenture Trustee, governing the Company's 7 ¾% Senior Notes due 2012.

"**Solvency Certificate**" means a Solvency Certificate of the chief financial officer of Holdings and each Borrower substantially in the form of Exhibit G.

"**Solvent**" means, with respect to any Person, that as of the date of determination both (A) (i) the then fair saleable value of the property of such Person is (y) greater than the total amount of liabilities (including contingent liabilities) of such Person and (z) not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person; (ii) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (iii) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (B) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**Sponsor**" means, collectively, the Aurora Group Investors, the Ares Group Investors and the Affiliates (without giving effect to clause (i) of the last sentence of the definition of such term) of Aurora Management Partners LLC or Ares Management LLC.

"**Subject Transaction**" has the meaning assigned to that term in Section 6.8(c)(i).

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Swing Line Lender**" means Credit Suisse in its capacity as Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

"**Swing Line Loan**" means a Loan made by Swing Line Lender to Company pursuant to Section 2.3.

"**Swing Line Note**" means a promissory note in the form of Exhibit B-2, as it may be amended, supplemented or otherwise modified from time to time.

"**Swing Line Sublimit**" means the lesser of (i) $5,000,000, and (ii) the aggregate unused amount of Revolving Loan Commitments then in effect.

"**Tax**" means, with respect to any Person, any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided, however, solely for purposes of Sections 2.18 and 2.19, the foregoing shall not include (a) taxes imposed on or measured by such Person's overall net income (however denominated), and franchise taxes imposed on such Person (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such Person is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Company is located and (c) in the case of a Non-US Lender, any withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new lending office) or is attributable to such Lender's failure (other than as a result of a Change in Law) to comply with Section 2.19(c), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Company with respect to such withholding tax pursuant to Section 2.19(a) or Section 2.19(b).

"**Term Loan Collateral Agent**" means Credit Suisse as collateral agent under the Term Loan Facility.

"**Term Loan Document**" all documents, instruments or agreements executed and delivered by Holdings or any of its subsidiaries for the benefit of any agent or lender in connection with the Term Loan Facility.

"**Term Loan Facility**" means the $85.0 million senior secured term loan pursuant to the term loan agreement dated as of the Closing Date among Holdings, the Company, certain subsidiary guarantors, the lenders party thereto and Credit Suisse as administrative agent and collateral agent, as it may be amended, modified, refinanced or replaced from time to time, including amendments increasing the principal amount of term loans available thereunder.

"**Term Priority Collateral**" has the meaning assigned to that term in the Intercreditor Agreement.

"**Terminated Lender**" has the meaning assigned to that term in Section 2.22.

"**Test Period**" means, at any time, the four Fiscal Quarters last ended (in each case taken as one accounting period) for which financial statements are required to have been delivered, pursuant to Section 5.1(b).

"**Title Policy**" has the meaning assigned to that term in the definition of "Real Estate Asset Deliverables."

"**Total Utilization of Revolving Loan Commitments**" means, as at any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans (other than Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing Issuing Bank for any amount drawn under any Letter of Credit, but not yet so applied), (ii) the aggregate principal amount of all outstanding Swing Line Loans, and (iii) the Letter of Credit Usage.

"**Type of Loan**" means (i) with respect to Revolving Loans, a Base Rate Loan or a Eurodollar Rate Loan, and (ii) with respect to Swing Line Loans, a Base Rate Loan.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"**Utilization Rate**" means (a) the average of the daily difference between (1) the Revolving Loan Commitments, and (2) the sum of (x) the aggregate principal amount of outstanding Revolving Loans (excluding any outstanding Swing Line Loans) plus (y) the Letter of Credit Usage, divided by (b) the Revolving Loan Commitments.

1.2 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to

them in conformity with GAAP. Financial statements and other information required to be delivered by Holdings to Lenders pursuant to Section 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the most recent financial statements referred to in Section 4.7; provided that, solely for purposes of calculating the Restricted Payment Amount, the terms used in, or otherwise relating to, the definition of

"Restricted Payment Amount" shall, except as otherwise expressly provided herein, have the meanings assigned to them in conformity with GAAP as in effect from time to time.

1.3 Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

SECTION 2. LOANS AND LETTERS OF CREDIT

2.1 Revolving Loans.

(a) Revolving Loan Commitments. During the Revolving Loan Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make Revolving Loans to Borrower Representative in an aggregate principal amount at any time outstanding that will not (subject to the provisions of Section 9.9) result in such Lender's Revolving Exposure exceeding the lesser of (i) such Lender's Revolving Loan Commitment and (ii) such Lender's Pro Rata Share multiplied by the Borrowing Base. Subject to the other terms and conditions of this Agreement, amounts borrowed pursuant to this Section 2.1(a) may be repaid and reborrowed during the Revolving Loan Commitment Period. Each Lender's Revolving Loan Commitment shall expire on the Revolving Loan Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Loan Commitments shall be paid in full no later than such date.

(b) Borrowing Mechanics for Revolving Loans.

(i) Except pursuant to 2.3(d), Revolving Loans that are Base Rate Loans shall be made in an aggregate minimum amount of $2,000,000 and integral multiples of $500,000 in excess of that amount, and Revolving Loans that are Eurodollar Rate Loans shall be in an aggregate minimum amount of $2,000,000 and integral multiples of $500,000 in excess of that amount.

(ii) Whenever Borrower Representative desires that Lenders make Revolving Loans, Borrower Representative shall deliver to Administrative Agent a fully executed and delivered Funding Notice no later than 10:00 a.m. (New York City time) at least three (3) Business Days in advance of the proposed Credit Date in the case of a Eurodollar Rate Loan, and at least one (1) Business Day in advance of the proposed Credit Date in the case of a Revolving Loan that is a Base Rate Loan. Except as otherwise provided herein, a Funding Notice for a Revolving Loan that is a Eurodollar Rate Loan shall be irrevocable, and Company shall be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Funding Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, together with the applicable Type of Loan, shall be provided by Administrative Agent to each applicable Lender by telefacsimile with reasonable promptness.

(iv) Each Lender shall make the amount of its Revolving Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Revolving Loans available to Borrower Representative on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by Administrative Agent from Lenders to be credited to such account as may be designated in such Funding Notice.

(c) Appointment of Borrower Representative. Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to request and receive Loans and Letters of Credit pursuant to this Agreement in the name or on behalf of such Borrower. The Administrative Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower and provide such Letters of Credit to a Borrower as Borrower Representative may designate or direct, without notice to any other Borrower or Guarantor. Borrower Representative hereby accepts the appointment by Borrowers to act as the agent of Borrowers and agrees to ensure that the disbursement of any Loans to a Borrower requested by or paid to or for the account of such Borrower, or the issuance of any Letter of Credit for a Borrower hereunder, shall be paid to or for the account of such Borrower. Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from the Agents and Lenders with respect to the Obligations or otherwise under or in connection with

this Agreement and the other Loan Documents. Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any other Borrower by Borrower Representative shall be deemed for all purposes to have been made by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made directly by such Borrower. No purported termination of the appointment of Borrower Representative as agent as aforesaid shall be effective, except after ten (10) days' prior written notice to Administrative Agent and Collateral Agent.

2.2 Swing Line Loans.

(a) Swing Line Loans Commitments. During the Revolving Loan Commitment Period, subject to the terms and conditions hereof, Swing Line Lender hereby agrees to make Swing Line Loans to Borrower Representative in the aggregate amount up to but not exceeding the Swing Line Sublimit; provided, that after giving effect to the making of any Swing Line Loan, in no event shall the Total Utilization of Revolving Loan Commitments exceed the lesser of (i) the Revolving Loan

Commitments then in effect and (ii) the Borrowing Base. Subject to the other terms and conditions of this Agreement, amounts borrowed pursuant to this Section 2.2 may be repaid and reborrowed during the Revolving Loan Commitment Period. Swing Line Lender's Revolving Loan Commitment shall expire on the Revolving Loan Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans and the Revolving Loan Commitments shall be paid in full no later than such date.

(b) Borrowing Mechanics for Swing Line Loans.

(i) Swing Line Loans shall be made in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount.

(ii) Whenever Borrower Representative desires that Swing Line Lender make a Swing Line Loan, Borrower Representative shall deliver to Administrative Agent a Funding Notice no later than 12:00 p.m. (New York City time) on the proposed Credit Date.

(iii) Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Swing Line Lender shall make the proceeds of Swing Line Loans available to Borrower Representative on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by Administrative Agent from Swing Line Lender to be credited to such account as may be designated in such Funding Notice.

(iv) With respect to any Swing Line Loans which have not been voluntarily prepaid by Borrower Representative pursuant to Section 2.12, Swing Line Lender may at any time in its sole and absolute discretion, deliver to Administrative Agent (with a copy to Borrower Representative), no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed Credit Date, a notice (which shall be deemed to be a Funding Notice given by Borrower Representative) requesting that each Lender holding a Revolving Loan Commitment make Revolving Loans that are Base Rate Loans to Borrower Representative on such Credit Date in an amount equal to the amount of such Swing Line Loans (the "**Refunded Swing Line Loans**") outstanding on the date such notice is given which Swing Line Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than Swing Line Lender shall be immediately delivered by Administrative Agent to Swing Line Lender (and not to Borrower Representative) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, Swing Line Lender's Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by Swing Line Lender to Borrower Representative, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note of Swing Line Lender but shall instead constitute part of Swing Line Lender's outstanding Revolving Loans to Borrower Representative and shall be due under the Revolving Loan Note issued by Borrower Representative to Swing Line Lender. Borrower Representative hereby authorizes Administrative Agent and Swing Line Lender to charge Borrower Representative's accounts with Administrative Agent and Swing Line Lender (up to the amount available in each such account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent of the proceeds of such Revolving Loans made by Lenders, including the Revolving Loans deemed to be made by Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to Swing Line Lender should be recovered by or on behalf of Borrower Representative from Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by Section 2.16.

(v) If for any reason Revolving Loans are not made pursuant to Section 2.2(b)(iv) in an amount sufficient to repay any amounts owed to Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by Swing Line Lender, each Lender holding a Revolving Loan Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans, and in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one Business Day's notice from Swing Line Lender to Administrative Agent and each Lender, each Lender holding a Revolving Loan Commitment shall deliver to Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of Swing Line Lender. In order to evidence such participation each Lender holding a Revolving Loan Commitment agrees to enter into a participation agreement at the request of Swing Line Lender in form and substance reasonably satisfactory to Swing Line Lender. In the event any Lender holding a Revolving Loan Commitment fails to make available to Swing Line Lender the amount of such Lender's participation as provided in this paragraph, Swing Line Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three (3) Business Days at the rate customarily used by Swing Line Lender for the correction of errors among banks and thereafter at the Base Rate, as applicable.

(vi) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to the second preceding paragraph and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against Swing Line Lender, any Credit Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default or the failure of any condition set forth in Section 3.2 to be satisfied; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Credit Party; (D) any breach of this Agreement or any other Credit Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that Swing

Line Lender believed in good faith that all conditions under Section 3.2 to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans, were satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made, or the satisfaction of any such condition not satisfied had been waived by the Requisite Lenders prior to or at the time such Refunded Swing Line Loans or other unpaid Swing Line Loans were made; and (2) Swing Line Lender shall not be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default or (B) at a time when a Funding Default exists unless Swing Line Lender has entered into arrangements satisfactory to it and Borrower Representative to eliminate Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Ling Loan, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swing Line Loans.

2.3 Issuance of Letters of Credit and Purchase of Participations Therein.

(a) Letters of Credit. During the Revolving Loan Commitment Period, subject to the terms and conditions hereof, Issuing Bank agrees to issue Letters of Credit for the account of Borrower Representative in the aggregate amount up to but not exceeding the Letter of Credit Sublimit; provided, (i) each Letter of Credit shall be denominated in Dollars; (ii) the stated amount of each Letter of Credit shall not be less than $50,000 or such lesser amount as is acceptable to Issuing Bank; (iii) after giving effect to such issuance, in no event shall the Total Utilization of Revolving Loan Commitments exceed the lesser of (A) the Revolving Loan Commitments then in effect and (B) the Borrowing Base; (iv) after giving effect to such issuance, in no event shall the Letter of Credit Usage exceed the Letter of Credit Sublimit then in effect; and (v) in no event shall any Letter of Credit be issued later than thirty (30) days prior to the Revolving Loan Commitment Termination Date or have an expiration date later than the earlier of five (5) Business Days prior to the Revolving Loan Commitment Termination Date and the date which is one year from the date of issuance of such standby Letter of Credit. Subject to the foregoing, upon the request of Borrower Representative, Issuing Bank will issue a Letter of Credit that automatically will be extended for one or more successive periods not to exceed one year each, unless Issuing Bank elects not to extend for any such additional period; provided, Issuing Bank shall not extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time Issuing Bank must elect to allow such extension; provided, further, in the event a Funding Default exists, Issuing Bank shall not be required to issue any Letter of Credit unless Issuing Bank has entered into arrangements satisfactory to it and Borrower Representative to eliminate Issuing Bank's risk with respect to the participation in Letters of Credit of the Defaulting Lender, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the Letter of Credit Usage.

(b) Notice of Issuance. Whenever Borrower Representative desires the issuance of a Letter of Credit, it shall deliver to Administrative Agent an Issuance Notice no later than 12:00 p.m. (New York City time) at least five (5) Business Days, or in each case such shorter period as may be agreed to by Issuing Bank in any particular instance, in advance of the proposed date of issuance. Upon satisfaction or waiver of the conditions set forth in Section 3.2, Issuing Bank shall issue the requested Letter of Credit only in accordance with Issuing Bank's standard operating procedures. Upon the issuance of any Letter of Credit or amendment or modification to a Letter of Credit, Issuing Bank shall promptly notify each Lender of such issuance, which notice shall be accompanied by a copy of such Letter of Credit or amendment or modification to a Letter of Credit and the amount of such Lender's respective participation in such Letter of Credit pursuant to Section 2.3(e).

(c) Responsibility of Issuing Bank With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, Issuing Bank shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit. As between Borrower Representative and Issuing Bank, Borrower Representative assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by Issuing Bank, by the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuing Bank shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such 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; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of Issuing Bank, including any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority; none of the above shall affect or impair, or prevent the vesting of, any of Issuing Bank's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by Issuing Bank under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not give rise to any liability on the part of Issuing Bank to Borrower Representative. Notwithstanding anything to the contrary contained in this Section 2.4(c), Borrower Representative shall retain any and all rights it may have against Issuing Bank for any liability arising out of the gross negligence or willful misconduct of Issuing Bank.

(d) Reimbursement by Borrower Representative of Amounts Drawn or Paid Under Letters of Credit. In the event Issuing Bank has determined to honor a drawing under a Letter of Credit, it shall immediately notify Borrower Representative and Administrative Agent, and Borrower Representative shall reimburse Issuing Bank on or before the Business Day immediately following the date on which such drawing is honored (the "**Reimbursement Date**") in an amount in Dollars and in same day funds equal to the amount of such honored drawing; provided, anything contained herein to the contrary notwithstanding, (i) unless Borrower Representative shall have notified Administrative Agent and Issuing Bank prior to 10:00 a.m. (New York City time) on the date such drawing is honored that Borrower Representative intends to reimburse Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, Borrower Representative shall be deemed to have given a timely Funding Notice to Administrative Agent requesting Lenders to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 3.2, Lenders shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such honored drawing, the proceeds of which shall be applied directly by Administrative Agent to reimburse Issuing Bank for the amount of such honored drawing; and provided further, if for any reason proceeds of Revolving Loans are not received by Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, Borrower Representative shall reimburse Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.3(d) shall be deemed to relieve any Lender from its obligation to make Revolving Loans on the terms and conditions set forth herein, and Borrower Representative shall retain any and all rights it may have against any Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.4(d).

(e) Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Lender having a Revolving Loan Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share (with respect to the Revolving Loan Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that Borrower Representative shall fail for any reason to reimburse Issuing Bank as provided in Section 2.3(d), Issuing Bank shall promptly notify each Lender of the unreimbursed amount of such honored drawing and of such Lender's respective participation therein based on such Lender's Pro Rata Share of the Revolving Loan Commitments. Each Lender shall make available to Administrative Agent for Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of Administrative Agent specified in such notice, not later than 12:00 p.m. (New York City time) on the first business day (under the laws of the jurisdiction in which such office of Issuing Bank is located) after the date notified by Administrative Agent. In the event that any Lender fails to make available to Administrative Agent for Issuing Bank on such business day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.3(e), Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for three (3) Business Days at the rate customarily used by Issuing Bank for the correction of errors among banks and

thereafter at the Base Rate. Nothing in this Section 2.3(e) shall be deemed to prejudice the right of any Lender to recover from Issuing Bank any amounts made available by such Lender to Issuing Bank pursuant to this Section in the event that it is determined that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct on the part of Issuing Bank as determined by a final non-appealable judgment of a court of competent

jurisdiction. In the event Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.3(e) for all or any portion of any drawing honored by Issuing Bank under a Letter of Credit, such Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this Section 2.3(e) with respect to such honored drawing such Lender's Pro Rata Share of all payments subsequently received by Issuing Bank from Borrower Representative in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on Appendix B or at such other address as such Lender may request.

(f) Obligations Absolute. The obligation of Borrower Representative to reimburse Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by Lenders pursuant to Section 2.3(d) and the obligations of Lenders under Section 2.3(e) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which Borrower Representative or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Issuing Bank, Lender or any other Person or, in the case of a Lender, against Borrower Representative, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between Borrower Representative or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any 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; (iv) payment by Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Holdings or any of its Subsidiaries; (vi) any breach hereof or any other Credit Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing; provided, in each case, that payment by Issuing Bank under the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of Issuing Bank under the circumstances in question as determined by a final non-appealable judgment of a court of competent jurisdiction.

(g) Indemnification. Without duplication of any obligation of Borrower Representative under Section 10.2 or 10.3, in addition to amounts payable as provided herein, Borrower Representative hereby agrees to protect, indemnify, pay and save harmless Issuing Bank from and against any and all claims, demands, liabilities, damages, losses, costs, charges

and expenses (including reasonable fees, expenses and disbursements of counsel and allocated costs of internal counsel) which Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit by Issuing Bank, other than as a result of (1) the gross negligence or willful misconduct of Issuing Bank as determined by a final non-appealable judgment of a court of competent jurisdiction or (2) the wrongful dishonor by Issuing Bank of a proper demand for payment made under any Letter of Credit issued by it as determined by a final non-appealable judgment of a court of competent jurisdiction, or (ii) the failure of Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

2.4 Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Revolving Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower Representative a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Borrower Representative and Borrower Representative shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate applicable to such Loan. Nothing in this Section 2.4(b) shall be deemed to relieve any Lender from its obligation to fulfill its Revolving Loan Commitments hereunder or to prejudice any rights that Borrower Representative may have against any Lender as a result of any default by such Lender hereunder.

2.5 Use of Proceeds. The proceeds of Revolving Loans drawn on the Closing Date shall be used to repay outstanding obligations under the Existing Credit Agreement and pay transaction expenses. The proceeds of the Revolving Loans, Swing Line Loans and Letters of

Credit drawn after the Closing Date shall be applied by Borrower Representative for general corporate purposes (including payments of any dividends permitted under this Agreement) of Holdings and its Subsidiaries. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

2.6 Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower Representative to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower Representative, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Loan Commitments or Borrower Representative's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the Revolving Loan Commitments and Loans of each Lender from time to time (the "**Register**"). In the case of a Related Lender Assignment described in Section 10.6(e) that is not reflected in the Register, the assigning Lender shall maintain a comparable register, which shall be made available for inspection by Administrative Agent at any reasonable time and from time to time upon reasonable prior notice to such Lender. The Register shall be available for inspection by Borrower Representative or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register the Revolving Loan Commitments and the Loans, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Borrower Representative and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Loan Commitments or Borrower Representative's Obligations in respect of any Loan. Borrower Representative hereby designates Credit Suisse to serve as Borrower Representative's agent solely for purposes of maintaining the Register as provided in this Section 2.6, and Borrower Representative hereby agrees that, to the extent Credit Suisse serves in such capacity, Credit Suisse and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Borrower Representative at least two (2) Business Days prior to the Closing Date, or at any time thereafter, the Borrowers shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6, other than an assignee party to a Related Lender Assignment described in Section 10.6(c)(i)) on the Date (or, if such notice is delivered after the Closing Date, promptly after Borrower

Representative's receipt of such notice) a Note or Notes to evidence such Lender's Revolving Loan or Swing Line Loan, as the case may be.

2.7 Interest on Loans.

(a) Except as otherwise set forth herein, each Revolving Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or

(ii) if a Eurodollar Rate Loan, at the Adjusted Eurodollar Rate plus the Applicable Margin; and

(iii) in the case of Swing Line Loans, at the Base Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan (except a Swing Line Loan which can be made and maintained as Base Rate Loans only), and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by Borrower Representative and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

(c) In connection with Eurodollar Rate Loans there shall be no more than ten (10) Interest Periods outstanding at any time. In the event Borrower Representative fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Borrower Representative fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, Borrower Representative shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being

determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower Representative and each Lender.

(d) Interest payable pursuant to Section 2.7(a) shall be computed (i) in the case of Base Rate Loans at times when the Base Rate is based on the Prime Rate on the basis of a 365-day or 366-day year, as the case may be, and (ii) in the case of Eurodollar Rate Loans, and Base Rate Loans at times when the Base Rate is based on the Federal Funds Effective Rate, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan shall be payable in arrears on and to (i) each Interest Payment Date applicable to such Loan; (ii) upon any prepayment of such Loan that is a Eurodollar Rate Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

(f) Borrower Representative agrees to pay to Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of Borrower Representative at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2% per annum in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans.

(g) Interest payable pursuant to Section 2.7(f) shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by Issuing Bank of any payment of interest pursuant to Section 2.7(f), Issuing Bank shall distribute to each Lender, out of the interest received by Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event Issuing Bank shall have been

reimbursed by Lenders for all or any portion of such honored drawing, Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under Section 2.3(e) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by Issuing Bank in respect of that portion of such honored drawing so reimbursed by Lenders for the period from the date on which Issuing Bank was so reimbursed by Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by Borrower Representative.

2.8 Conversion/Continuation.

(a) Subject to Section 2.17 and so long as no Default or Event of Default shall have occurred and then be continuing, Borrower Representative shall have the option:

(i) to convert at any time all or any part of any Revolving Loan equal to $2,000,000 and integral multiples of $500,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless Borrower Representative shall pay all amounts due under Section 2.17 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Revolving Loan equal to $2,000,000 and integral multiples of $500,000 in excess of that amount as a Eurodollar Rate Loan.

(b) Borrower Representative shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three (3) Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans (or telephonic notice in lieu thereof) shall be irrevocable, and Borrower Representative shall be bound to effect a conversion or continuation in accordance therewith.

2.9 Default Interest. Upon the occurrence and during the continuance of an Event of Default under Sections 8.1(a), 8.1(f) or 8.1(g), the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans not paid when due and any fees and other amounts then due and payable hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 2% per annum in excess of the

interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.9 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent, Collateral Agent or any Lender.

2.10 Fees.

(a) Borrower Representative agrees to pay to Lenders having Revolving Exposure:

(i) (A) if the Utilization Rate for the applicable Fiscal Quarter is less than or equal to 0.333, a commitment fee equal to 0.375% *times* the average of the daily difference between (1) the Revolving Loan Commitments, and (2) the sum of (x) the aggregate principal amount of outstanding Revolving Loans (but not any outstanding Swing Line Loans) plus (y) the Letter of Credit Usage and (B) if the Utilization Rate for the applicable Fiscal Quarter is greater than 0.333, a commitment fee equal to 0.250% *times* the average of the daily difference between (1) the Revolving Loan Commitments, and (2) the sum of (x) the aggregate principal amount of outstanding Revolving Loans (but not any outstanding Swing Line Loans) plus (y) the Letter of Credit Usage; and

(ii) letter of credit fees equal to (1) the Applicable Margin for Revolving Loans that are Eurodollar Rate Loans (plus 2% during all times the rate of interest on the principal of the Loans is increased pursuant to Section 2.9), times (2) the average aggregate daily maximum amount available to be drawn under all such Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination).

All fees referred to in this Section 2.10(a) shall be paid to Administrative Agent at its Principal Office and upon receipt, Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereof.

(b) Borrower Representative agrees to pay directly to Issuing Bank, for its own account, the following fees:

(i) a fronting fee equal to 0.125%, per annum, times the average aggregate daily maximum amount available to be drawn under all Letters of Credit (determined as of the close of business on any date of determination); and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with Issuing Bank's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

(c) All fees referred to in Section 2.10(a) and 2.10(b)(i) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable quarterly in arrears on the last Business Day in each of March, June, September and December of each year during the Revolving Loan Commitment Period, commencing on June 30, 2007, and on the Revolving Loan Commitment Termination Date.

(d) In addition to any of the foregoing fees, Borrowers agree to pay to Arranger and Agents such other fees and other payments in the amounts and at the times separately agreed upon.

2.11 Determination of Borrowing Base.

(a) Eligible Accounts. On any date of determination of the Borrowing Base, all of the Accounts owned by any Borrower, as applicable, and reflected in the most recent Borrowing Base Certificate delivered by the Borrower Representative to the Collateral Agent and the Administrative Agent, shall be "**Eligible Accounts**" for the purposes of this Agreement, except any Account to which any of the exclusionary criteria set forth below applies. Eligible Accounts shall not include any of the following Accounts:

(i) any Account in which the Collateral Agent, on behalf of the Secured Parties, does not have a valid perfected First Priority Lien;

(ii) any Account that is not owned by a Credit Party;

(iii) any Account due from an Account Debtor that is not domiciled in the United States or Canada and (if not a natural person) organized

under the laws of the United States or Canada or any political subdivision thereof;

(iv) any Account that is payable in any currency other than Dollars;

(v) any Account that does not arise from the sale of goods or the performance of services by such Credit Party in the ordinary course of its business;

(vi) any Account that does not comply with all applicable legal requirements, including, without limitation, all laws, rules, regulations and orders of any Governmental Authority;

(vii) any Account which is owed by an Account Debtor located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit the applicable Borrower to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Borrower (at the time the Account was created and at all times thereafter) (i) has qualified to do business in such jurisdiction and such qualification enables Borrower to seek judicial recourse in such jurisdiction, (ii) had filed and has filed and maintained effective such report with the appropriate office or agency of in such jurisdictions, as applicable, or (iii) was and has continued to be exempt from filing such report and has provided the Collateral Agent with satisfactory evidence thereof;

(viii) any Account (a) upon which the right of a Borrower, as applicable, to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever unless such condition is satisfied or (b) as to which such Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial or administrative process or (c) that represents a progress billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account Debtor's obligation to pay that invoice is subject to a Borrower's or any Guarantor's, as applicable, completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer;

(ix) to the extent that any defense, counterclaim, setoff or dispute is asserted as to such Account, it being understood that the amount of

any such defense, counterclaim, setoff or dispute shall be disclosed to the Collateral Agent and that the remaining balance of the Account shall be eligible;

(x) [RESERVED]

(xi) any Account with respect to which an invoice or other electronic transmission constituting a request for payment, reasonably acceptable to the Collateral Agent in form and substance, has not been sent on a timely basis to the applicable Account Debtor according to the normal invoicing and timing procedures of a Borrower, as applicable;

(xii) any Account that arises from a sale to any director, officer, other employee or Affiliate of any Credit Party, or to any entity that has any common officer or director with any Credit Party;

(xiii) to the extent Holdings or any Subsidiary is liable for goods sold or services rendered by the applicable Account Debtor to any Credit Party or any Subsidiary of a Credit Party but only to the extent of the potential offset;

(xiv) any Account that arises with respect to goods that are delivered on a bill-and-hold, cash-on-delivery basis or placed on consignment, guaranteed sale or other terms by reason of which the payment by the Account Debtor is or may be conditional;

(xv) any Account that is in default; provided, that, without limiting the generality of the foregoing, an Account shall be deemed in default upon the occurrence of any of the following:

(1) that portion of any Account that is more than sixty (60) days past due according to its original terms of sale or which has been written off or designated as uncollectible by such Borrower (and, for the avoidance of doubt, the remainder of any such Account shall not be in default for purposes hereof unless all Accounts of the applicable Account Debtor are ineligible pursuant to clause (xvi) below); or

(2) the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of

creditors, has become insolvent, admits in writing its inability to pay its bills as they become due or fails to pay its debts generally as they come due; or

(3) a petition is filed by or against any Account Debtor obligated upon such Account under any bankruptcy law or any other federal, state or foreign (including any provincial) receivership, insolvency relief or other law or laws for the relief of debtors; or

(4) the payment terms (at inception or as modified from time to time) of any Account are not reasonably satisfactory to the Administrative Agent or Collateral Agent (it being understood that Borrowers' customary terms as of the Closing Date are satisfactory to the Administrative Agent and the Collateral Agent);

(xvi) any Account that is the obligation of an Account Debtor (other than an individual) if 50% or more of the Dollar amount of all Accounts owing by that Account Debtor are ineligible under the other criteria set forth in clause (xv) above;

(xvii) any Account as to which any of the representations or warranties in the Loan Documents are untrue;

(xviii) to the extent such Account is evidenced by a judgment, Instrument or Chattel Paper;

(xix) to the extent (A) the Accounts owing from such Account Debtor and its Affiliates to the Borrowers exceeds 20% of the aggregate of all Eligible Accounts or (B) exceeds any credit limit established by the Collateral Agent, in good faith and in the exercise of reasonable (from

the perspective of a secured asset-based lender) business judgment, following prior notice of such limit by the Collateral Agent to the Borrower Representative;

(xx) that portion of any Account (1) in respect of which there has been, or should have been, established by a Borrower or any Guarantor a contra account, whether in respect of contractual allowances with respect to such Account, audit adjustment, anticipated discounts or otherwise or (2) which is due from an Account Debtor to whom any Credit Party owes a trade payable, but only to the extent of such trade payable;

(xxi) any Account on which the Account Debtor is a Governmental Authority, unless a Credit Party, as applicable, has assigned its rights to payment of such Account to the Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended, in the case of a federal Governmental Authority, and pursuant to applicable law, if any, in the case of any other Governmental Authority, and such assignment has been accepted and acknowledged by the appropriate government officers; or

(xxii) any Account which is due from an Account Debtor that has been structured as note payable or has been restructured as a note payable.

(b) Eligible Inventory. For purposes of this Agreement, "**Eligible Inventory**" shall mean any marketable raw materials and unsold finished Inventory of the Borrowers held for sale in the ordinary course, but shall exclude any Inventory to which any of the exclusionary criteria set forth below applies. Eligible Inventory shall not include any Inventory of any Borrower that:

(i) the Collateral Agent, on behalf of Secured Parties, does not have a valid, perfected First Priority Lien on such Inventory;

(ii) (1) is stored at a leased location where the aggregate value of Inventory exceeds $250,000 unless the Collateral Agent has given its prior consent thereto or unless either (x) a Collateral Access Agreement has been delivered to the Collateral Agent, or (y) Reserves reasonably satisfactory to the Collateral Agent have been established with respect thereto or (2) is stored with a bailee or warehouseman where the aggregate value of Inventory exceeds $250,000 unless either (x) an acknowledged bailee waiver letter which is in form and substance satisfactory to the Collateral Agent and the Administrative Agent has been received by the Collateral Agent or (y) Reserves reasonably satisfactory to the Collateral Agent have been established with respect thereto, or (3) is located at an owned location subject to a mortgage in favor of a lender other than the Collateral Agent (but excluding any mortgage in favor of the Term Loan Collateral Agent so long as such location is also subject to a mortgage in favor of the Collateral Agent) where the aggregate value of Inventory exceeds $250,000 unless either (x) mortgagee waiver which is in form and substance satisfactory to the Collateral Agent and the Administrative Agent has been delivered to the Collateral Agent or (y) Reserves reasonably satisfactory to the Collateral Agent have been established with respect thereto;

(iii) is placed on consignment, unless a valid consignment agreement which is reasonably satisfactory to Collateral Agent is in place with respect to such Inventory and such consignment has been perfected under the relevant UCC;

(iv) is covered by a negotiable document of title, unless such document has been delivered to the Collateral Agent with all necessary endorsements, free and clear of all Liens except those in favor of the Collateral Agent and the Lenders and landlords, carriers, bailees and warehousemen if clause (ii) above has been complied with;

(v) has been returned by a customer due to a claimed defect or is to be returned to suppliers;

(vi) is, in the Collateral Agent's reasonable (from the perspective of a secured asset-based lender) business judgment, slow moving, used, obsolete, unsalable, discontinued, shopworn, seconds, damaged or unfit for sale at prices at least approximating cost, or unacceptable due to age, type, category and/or quantity;

(vii) consists of display items, samples or packing or shipping materials, manufacturing supplies, work-in process Inventory or replacement parts;

(viii) is not of a type held for sale in the ordinary course of any Credit Party's business;

(ix) is not located in the United States or Canada or is in transit;

(x) which is being processed off-site by a third party;

(xi) for which any seller has asserted reclamation rights;

(xii) breaches any of the covenants, representations or warranties pertaining to Inventory set forth in the Credit Documents;

(xiii) consists of Hazardous Material or goods that can be transported or sold only with licenses that are not readily available;

(xiv) is not covered by casualty insurance maintained as required by Section 5.5; or

(xv) is subject to any licensing arrangement the effect of which would be to limit the ability of Collateral Agent, or any person selling the Inventory on behalf of Collateral Agent, to sell such Inventory in enforcement of the Collateral Agent's Liens, without further consent or payment to the licensor or other.

2.12 Voluntary Prepayments/Commitment Reductions.

(a) Voluntary Prepayments.

(i) Any time and from time to time:

(1) with respect to Base Rate Loans, Borrower Representative may prepay any such Loans on any Business Day in whole or in

part, in an aggregate minimum amount of $2,000,000 and integral multiples of $500,000 in excess of that amount;

(2) with respect to Eurodollar Rate Loans, Borrower Representative may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $2,000,000 and integral multiples of $500,000 in excess of that amount; and

(3) with respect to Swing Line Loans, Borrower Representative may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $1,000,000, and in integral multiples of $500,000 in excess of that amount.

(ii) All such prepayments shall be made:

(1) upon not less than one (1) Business Day's prior written or telephonic notice in the case of Base Rate Loans;

(2) upon not less than three (3) Business Days' prior written or telephonic notice in the case of Eurodollar Rate Loans; and

(3) upon written or telephonic notice on the date of prepayment, in the case of Swing Line Loans;

in each case given to Administrative Agent or Swing Line Lender, as the case may be, by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly notify each Lender) or Swing Line Lender, as the case may be. Upon the giving of any such notice (which notice shall be irrevocable), the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.14(a).

(b) Voluntary Commitment Reductions.

(i) Borrower Representative may, upon not less than three (3) Business Days' prior written or telephonic notice confirmed in writing to Administrative Agent (and Administrative Agent will promptly notify each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Loan Commitments in an amount up to the amount by which the Revolving Loan Commitments exceed the Total Utilization of Revolving Loan Commitments at the time of such proposed termination or reduction; provided, any such partial reduction of the Revolving Loan Commitments shall be in an aggregate minimum amount of $10,000,000 and integral multiples of $1,000,000 in excess of that amount.

(ii) Borrower Representative's notice to Administrative Agent (which notice shall be irrevocable) shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Loan Commitments shall be effective on the date specified in Borrower Representative's notice and shall reduce the Revolving Loan Commitment of each Lender proportionately to its Pro Rata Share thereof.

2.13 Mandatory Prepayments.

(a) In the event of the termination of all the Revolving Loan Commitments, Borrowers shall, on the date of such termination, repay or prepay all its outstanding Revolving Borrowings and all outstanding Swingline Loans and replace all outstanding Letters of Credit or cash collateralize all outstanding Letters of Credit.

(b) In the event that the sum of all Lenders' Revolving Exposures exceeds the lesser of the Revolving Loan Commitments and the Borrowing Base, in each case, then in effect, Borrowers shall, without notice or demand, immediately *first*, repay or prepay Revolving Borrowings, and *second*, cash collateralize outstanding Letters of Credit, in each case, in an aggregate amount sufficient to eliminate such excess; provided, however, that (notwithstanding anything to the contrary in this clause (b)) if the sum of all Lenders' Revolving Exposures exceeds the Borrowing Base then in effect as a direct result of the establishment of a Reserve or credit limit (pursuant to Section 2.11(a)(xix)(B)) by Collateral Agent or Administrative Agent, as applicable, for which Borrower Representative did not have at least 5 days prior notice, Borrowers shall, without notice or demand, within 5 days of the occurrence of such excess, *first*, repay or prepay Revolving Borrowings, and *second*, cash collateralize outstanding Letters of Credit, in each case, in an aggregate amount sufficient to eliminate such excess.

(c) In the event that the aggregate Letter of Credit Usage exceeds the Letter of Credit Sublimit then in effect, Borrower shall, without notice or demand, immediately cash collateralize outstanding Letters of Credit, in each case, in an aggregate amount sufficient to eliminate such excess.

(d) In the event an Account Control Event has occurred and is continuing (as contemplated by Section 5.15), the Credit Parties shall pay all proceeds of Collateral into the Collection Account, for application in accordance with Section 2.15(b).

2.14 Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments. Any prepayment of any Loan pursuant to Section 2.12(a) shall be applied as specified by Borrower Representative in the applicable notice of prepayment; provided, in the event Borrower Representative fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied as follows:

first, to repay outstanding Swing Line Loans to the full extent thereof (without a corresponding reduction of the Revolving Loan Commitments by the amount of such prepayment);

second, to repay outstanding Revolving Loans to the full extent thereof (without a corresponding reduction of the Revolving Loan Commitments by the amount of such repayment);

third, to prepay outstanding reimbursement obligations with respect to Letters of Credit (without a corresponding reduction of the Revolving Loan Commitments by the amount of such prepayment); and

fourth, to cash collateralize Letters of Credit (without a corresponding reduction of the Revolving Loan Commitments by the amount of such cash collateralization);

(b) Application of Mandatory Prepayments. Any amount required to be paid pursuant to Section 2.13 shall be applied as follows:

first, to prepay outstanding Swing Line Loans to the full extent thereof (without a corresponding reduction of the Revolving Loan Commitments by the amount of such prepayment);

second, to prepay the Revolving Loans to the full extent thereof (without a corresponding reduction of the Revolving Loan Commitments by the amount of such prepayment);

third, to prepay outstanding reimbursement obligations with respect to Letters of Credit (without a corresponding reduction of the Revolving Loan Commitments by the amount of such prepayment); and

fourth, to cash collateralize Letters of Credit (without a corresponding reduction of the Revolving Loan Commitments by the amount of such cash collateralization);

(c) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Considering each Class of Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower Representative pursuant to Section 2.17(c).

2.15 General Provisions Regarding Payments.

(a) All payments by Borrower Representative of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 p.m. (New York City time) on the date due at Administrative Agent's Principal Office for the account of Lenders; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower Representative on the next succeeding Business Day, at Administrative Agent's sole discretion.

(b) All payments in respect of the principal amount of any Loan (other than voluntary prepayments of Revolving Loans) shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.

(c) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period," whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the Revolving Loan Commitment fees hereunder.

(f) Administrative Agent, at its sole discretion, shall deem any payment by or on behalf of Borrower Representative hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Borrower Representative and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.9 from the date such amount was due and payable until the date such amount is paid in full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, all payments or proceeds received by Agents hereunder in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 7.2 of the Pledge and Security Agreement.

2.16 Ratable Sharing. Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or

otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower Representative or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower Representative expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may, so long as an Event of Default has occurred and is continuing, exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by Borrower Representative to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.17 Making or Maintaining Eurodollar Rate Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition

of Adjusted Eurodollar Rate, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Borrower Representative and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as Administrative Agent notifies Borrower Representative and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by Borrower Representative with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Borrower Representative.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Borrower Representative and Administrative Agent) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good

faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "**Affected Lender**" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to Borrower Representative and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by Borrower Representative pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (3) the Affected Lender's obligation to maintain its outstanding Eurodollar Rate Loans (the "**Affected Loans**") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by Borrower Representative pursuant to a Funding Notice or a Conversion/Continuation Notice, Borrower Representative shall have the option, subject to the provisions of Section 2.17(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.17(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower Representative shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by Borrower Representative.

(d) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.17 and under Section 2.18 shall be made as though such Lender had actually funded each of its relevant Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Adjusted Eurodollar Rate in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its Eurodollar Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.17 and under Section 2.18.

2.18 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.20 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender (which term shall include Issuing Bank for purposes of this Section 2.18(a)) shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the Closing Date, or compliance by such Lender with any guideline, request or directive issued or made after the Closing Date by any central bank, other Governmental Authority or quasi-governmental authority (whether or not having the force of law) (any such event, a "**Change in Law**"): (i) subjects such Lender (or its applicable lending office) to any additional Tax with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of Adjusted Eurodollar Rate); or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrower Representative

shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Borrower Representative (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.18(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender (which term shall include Issuing Bank for purposes of this Section 2.18(b)) shall have determined that any Change in Law regarding capital adequacy has or would have the effect of reducing the rate of return on the capital of such Lender or any

corporation controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Revolving Loan Commitments or Letters of Credit, or participations therein or other obligations hereunder with respect to the Loans or the Letters of Credit to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by Borrower Representative from such Lender of the statement referred to in the next sentence, Borrower Representative shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Such Lender shall deliver to Borrower Representative (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.18(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

2.19 Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of any Credit Party or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If any Credit Party or any other Person is required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender (which term shall include Issuing Bank for purposes of this Section 2.19(b)) under any of the Credit Documents: (i) Borrower Representative shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Borrower Representative becomes aware of it; (ii)

Borrower Representative shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty (30) days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty (30) days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrower Representative shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, no such additional amount shall be required to be paid to any Lender under clause (iii) above except to the extent that any change after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, as the case may be, in respect of payments to such Lender.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-US Lender**") shall deliver to Administrative Agent for transmission to Borrower Representative, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower Representative or Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower Representative to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver either Internal Revenue Service Form W-8ECI pursuant to clause (i) above, a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower Representative to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.19(c) hereby agrees, from time to time after the initial delivery

by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrower Representative two new original copies of Internal Revenue Service Form W-8BEN or W-8ECI, or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower Representative to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Borrower Representative of its inability to deliver any such forms, certificates or other evidence. Borrower Representative shall not be required to pay any additional amount to any Non-US Lender under Section 2.19(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence referred to in the second sentence of this Section 2.19(c), or (2) to notify Administrative Agent and Borrower Representative of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.19(c) on the Closing Date, or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.19(c) shall relieve Borrower Representative of its obligation to pay any additional amounts pursuant this Section 2.19 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

2.20 Obligation to Mitigate. Each Lender (which term shall include Issuing Bank for purposes of this Section 2.20) agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans or Letters of Credit, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.17, 2.18 or 2.19, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.17, 2.18 or 2.19 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Revolving Loan Commitments, Loans or Letters of Credit through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Revolving Loan Commitments, Loans or Letters of Credit or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.20 unless Borrower Representative agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described in clause (i) above. A certificate as to the amount of any such expenses payable by Borrower Representative pursuant to this Section

2.20 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower Representative (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.21 Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender, other than at the direction or request of any regulatory agency or authority, defaults (a "**Defaulting Lender**") in its obligation to fund (a "**Funding Default**") any Revolving Loan or its portion of any unreimbursed payment under Section 2.2(b)(iv) or 2.3(e) (in each case, a "**Defaulted Loan**"), then (a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents; (b) to the extent permitted by applicable law, until such time as the Default Excess with respect to such Defaulting Lender shall have been reduced to zero, (i) any voluntary prepayment of the Revolving Loans shall, if Borrower Representative so directs at the time of making such voluntary prepayment, be applied to the Revolving Loans of other Lenders as if such Defaulting Lender had no Revolving Loans outstanding and the Revolving Exposure of such Defaulting Lender were zero, and (ii) any mandatory prepayment of the Revolving Loans shall, if Borrower Representative so directs at the time of making such mandatory prepayment, be applied to the Revolving Loans of other Lenders (but not to the Revolving Loans of such Defaulting Lender) as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender, it being understood and agreed that Borrower Representative shall be entitled to retain any portion of any mandatory prepayment of the Revolving Loans that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause (b); (c) such Defaulting Lender's Revolving Loan Commitment and outstanding Revolving Loans and such Defaulting Lender's Pro Rata Share of the Letter of Credit Usage shall be excluded for purposes of calculating the Revolving Loan Commitment fee payable to Lenders in respect of any day during any Default Period with respect to such Defaulting Lender, and such Defaulting Lender shall not be entitled to receive any Revolving Loan Commitment fee pursuant to Section 2.10 with respect to such Defaulting Lender's Revolving Loan Commitment in respect of any Default Period with respect to such Defaulting Lender; and (d) the Total Utilization of Revolving Loan Commitments as at any date of determination shall be calculated as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender. No Revolving Loan Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.21, performance by Borrower Representative of its obligations hereunder and the other Credit Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.21. The rights and remedies against a Defaulting Lender under this Section 2.21 are in addition to other rights and remedies which Borrower Representative may have against such Defaulting Lender with respect to any Funding Default and which Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default.

2.22 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "**Increased-Cost Lender**") shall give notice to Borrower Representative that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.17, 2.18 or 2.19, (ii) the circumstances

which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five (5) Business Days after Borrower Representative's request for such withdrawal; or (b) (i) any Lender shall become a Defaulting Lender, (ii) the Default Period for such Defaulting Lender shall remain in effect, and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five (5) Business Days after Borrower Representative's request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the "**Terminated Lender**"), Borrower Representative may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, or Administrative Agent may, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Revolving Loan Commitments, if any, in full to one or more Eligible Assignees satisfactory to Administrative Agent (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.10; (2) on the date of such assignment, Borrower Representative shall pay any amounts payable to such Terminated Lender pursuant to Section 2.17(c), 2.18 or 2.19, or otherwise as if it were a prepayment; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; provided, Borrower Representative may not make such election with respect to any Terminated Lender that is also an Issuing Bank unless, prior to the effectiveness of such election, Borrower Representative shall have caused each outstanding Letter of Credit issued thereby to be cancelled. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Revolving Loan Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

SECTION 3. CONDITIONS PRECEDENT

3.1 Closing Date. The obligation of any Lender to make a Credit Extension Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Credit Documents. Administrative Agent shall have received (i) sufficient copies of this Agreement, executed and delivered by each applicable Credit Party, the Agents and Lenders having Revolving Loan Commitments hereunder and, (ii) Notes, if any, requested by any Lender pursuant to Section 2.6(c) in connection with its Revolving Loan Commitments, executed and delivered by the Borrowers.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) copies of each Organizational Document for each Credit Party, certified as of a recent date prior to the Closing Date by the appropriate governmental official or, as applicable, by an officer of such Credit Party; (ii) signature and incumbency certificates of the officers of each Credit Party executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Governmental Authorizations and Consents.

(i) Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated under this Agreement and each of the foregoing shall be in full force and effect

and in form and substance reasonably satisfactory to Administrative Agent.

(ii) Each of the Lenders shall have received, at least five (5) Business Days in advance of the Closing Date, all documentation and other information required by Governmental Authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including, without limitation, as required by the Uniting and Strengthening America by Providing Appropriate

Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

(d) ABL Priority Collateral. The Administrative Agent shall be satisfied with the valid perfected First Priority security interest in favor of Collateral Agent, for the benefit of Secured Parties, in the ABL Priority Collateral.

(e) Term Priority Collateral. The Administrative Agent shall be satisfied with the valid perfected Second Priority security interest in favor of Collateral Agent, for the benefit of Secured Parties, in the Term Priority Collateral of each Credit Party.

(f) Opinion of Counsel to Credit Parties. Lenders and their respective counsel shall have received originally executed copies of the favorable written opinion of Gibson, Dunn & Crutcher LLP, counsel for Credit Parties, in form and substance satisfactory to the Administrative Agent, dated as of the Closing Date (and each Credit Party hereby instructs such counsel to deliver such opinion to Agents and Lenders).

(g) Fees. Borrower Representative shall have paid to Arranger and Agents the fees and other amounts payable on the Closing Date referred to in Section 2.10(d).

(h) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate dated as of the Closing Date and addressed to Administrative Agent and Lenders, in form, scope and substance satisfactory to Administrative Agent, with appropriate attachments and demonstrating that after giving effect to the transactions contemplated by the Credit Documents and the Term Loan Documents, each Borrower is and will be, and Holdings and its Subsidiaries (on a consolidated basis) are and will be Solvent.

(i) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the opinion of Administrative Agent, singly or in the aggregate, could reasonably be expected to restrain, prevent or impose materially burdensome conditions on the transactions contemplated by this Agreement or the other Credit Documents.

(j) No Material Adverse Effect. Since December 31, 2006, there shall not have occurred a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of Company and its Subsidiaries, taken as a whole.

(k) Existing Credit Agreement Prepayments. The Administrative Agent shall be satisfied that, concurrently with the borrowing of the Revolving Loans on the Closing Date, the Existing Credit Agreement will be terminated, all Liens securing obligations under the

Existing Agreement will be released, and all obligations under the Existing Credit Agreement repaid in full.

(l) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent and its counsel shall be satisfactory in form and substance to Administrative Agent and such counsel, and Administrative Agent and such counsel shall have received all such counterpart originals or certified copies of such documents as Administrative Agent may reasonably request.

(m) Term Loan Facility. Borrower Representative shall have entered into the Term Loan Facility and the Term Loan Documents shall be satisfactory to the Administrative Agent.

(n) Inventory Appraisal. The Inventory Appraisal and a written report regarding the results of a commercial finance examination of the Borrowers shall be satisfactory to the Collateral Agent.

(o) Closing Date Borrowing Base Certificate. The Administrative Agent and the Collateral Agent shall have received a Borrowing Base Certificate dated the Closing Date, relating to the month most recently ended at least 5 days prior to the Closing Date and executed by the chief financial officer of the Borrower Representative and demonstrating Excess Availability of at least $15,000,000 after giving effect to the Revolving Loans to be made on the Closing Date.

(p) Blocked Account Agreement. Enter into a Blocked Account Agreement with respect to each Deposit Account of any Credit Party.

(q) Closing Date Certificate. The Administrative Agent shall have received a certificate signed by the chief financial officer of the Borrower Representative dated the Closing Date, certifying (A) that the conditions specified in Section 3.1(a) have been satisfied, (B) that the representations and warranties contained in Section 4 are true and correct and (C) that no event shall have occurred and be continuing or would result from the consummation of the Credit Extensions on the Closing Date that would constitute an Event of Default or a Default.

Each Lender, by delivering its signature page to this Agreement on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved on the Closing Date.

3.2 Conditions to Each Credit Extension.

(a) Conditions Precedent. The obligation of each Lender to make any Loan, or Issuing Bank to issue any Letter of Credit, on any Credit Date, including the Closing Date, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Administrative Agent shall have received a fully executed and delivered Funding Notice or Issuance Notice, as the case may be;

(ii) after making the Credit Extensions requested on such Credit Date, the Total Utilization of Revolving Loan Commitments shall not exceed the

Revolving Loan Commitments then in effect;

(iii) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date;

(iv) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default; and

(v) on or before the date of issuance of any Letter of Credit, Administrative Agent shall have received all other information required by the applicable Issuance Notice, and such other documents or information as Issuing Bank may reasonably require in connection with the issuance of such Letter of Credit.

(b) Notices. Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Borrower Representative may give Administrative Agent telephonic notice by the required time of any proposed borrowing, conversion/continuation or issuance of a Letter of Credit, as the case may be; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the applicable date of borrowing, continuation/conversion or issuance. Neither Administrative Agent nor any Lender shall incur

any liability to Borrower Representative in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of Borrower Representative or for otherwise acting in good faith.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Lenders and Issuing Bank to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to each Lender and Issuing Bank, on the Closing Date and on each Credit Date, that the following statements are true and correct:

4.1 Organization; Requisite Power and Authority; Qualification. Each of Holdings and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1 (subject to such changes as are permitted by Section 6.9), (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2 Capital Stock and Ownership. The Capital Stock of each of Holdings and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Holdings or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Holdings or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Holdings or any of its Subsidiaries of any additional membership interests or other Capital Stock of Holdings or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Holdings or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Holdings and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

4.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4 No Conflict. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to Holdings or any of its Subsidiaries, any of

the Organizational Documents of Holdings or any of its Subsidiaries; (b) violate any order, judgment or decree of any court or other agency of government binding on Holdings or any of its Subsidiaries except to the extent such violation could not be reasonably expected to have a Material Adverse Effect; (c) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Holdings or any of its Subsidiaries except to the extent such violation could not reasonably be expected to have a Material Adverse Effect; (d) result in or require the creation or imposition of any Lien upon any of the properties or assets of Holdings or any of its Subsidiaries (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or (e) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Holdings or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

4.5 Governmental Consents. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except to the extent obtained on or before the Closing Date, and except for filings and recordings with respect to the Collateral made or to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date.

4.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7 Financial Condition. Holdings has heretofore delivered to Administrative Agent (a) the audited consolidated balance sheet of Company and its Subsidiaries for the Fiscal Years ended December 31, 2004, December 31, 2005 and December 31, 2006, and the related audited consolidated statements of income, stockholders' equity and cash flows of each of such companies for each such Fiscal Year then ended, together with all related notes and schedules thereto, and (b) the unaudited consolidated balance sheet of Company and its Subsidiaries for the three-month period ended March 30, 2007 and the related unaudited consolidated statements of income, stockholders' equity and cash flows of the Company and its Subsidiaries for such three-month period then ended, together with all related notes and schedules thereto. All such statements of Company and its Subsidiaries were prepared in conformity with GAAP and fairly present, in all material respects, the financial position of the entities described in such financial statements as at the respective dates thereof and the results of operations and cash flows of the entities described therein for each of the periods then ended, subject, in the case of such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnotes. As of the Closing Date, neither Company nor any of its

Subsidiaries has any contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the foregoing financial statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company and its Subsidiaries taken as a whole.

4.8 Projections. On and as of the Closing Date, the projections of Holdings and its Subsidiaries for (x) the period Fiscal Year 2007 through and including Fiscal Year 2013 and (y) the Fiscal Quarters beginning with the second Fiscal Quarter of 2007 through and including the fourth Fiscal Quarter of 2008 (collectively, the "**Projections**") previously delivered to Administrative Agent and the Lenders are based on good faith estimates and assumptions made by the management of Holdings, it being recognized, however, that projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from the projected results and that the differences may be material.

4.9 No Material Adverse Change. Since December 31, 2006, except as set forth in Schedule 4.9, no event, circumstance or change has occurred that has caused or evidences, or could reasonably be expected to cause, either in any case or in the aggregate, a Material Adverse Effect.

4.10 No Restricted Payments. Neither Holdings nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Payment or agreed to do so except as permitted pursuant to Section 6.5.

4.11 Litigation; Adverse Facts. Except as set forth in Schedule 4.11 hereto,there are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.12 Payment of Taxes. Except as otherwise permitted under Section 5.3, all tax returns and reports of Holdings and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Holdings and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Neither Holdings nor any of its Subsidiaries knows of any proposed tax assessment against Holdings or any of its Subsidiaries other than those which are being actively contested by Holdings or such Subsidiary in good faith and by appropriate

proceedings and for which reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13 Properties.

(a) Title. Each of Holdings and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in the most recent financial statements delivered to the Administrative Agent, in each case except for assets disposed of (x) since the date of such financial statements and prior to the Closing Date in the ordinary course of business or (y) as otherwise permitted under Section 6.9 and except for such defects that neither individually nor in the aggregate could reasonably be expected to have a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof), if any, affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Holdings does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

(c) Intellectual Property. Company and its Subsidiaries own or have the valid right to use all material Intellectual Property, and all Intellectual Property is free and clear of any and all Liens other than Liens securing the Obligations and Liens permitted pursuant to Section 6.2(i). Any registrations in respect of the Intellectual Property are in full force and effect and are valid and enforceable. The conduct of the business of Company and its Subsidiaries as currently conducted, and as currently contemplated to be conducted, including, but not limited to, all products, processes or services, made, offered or sold by Company and its Subsidiaries, does not and will not infringe upon, violate, misappropriate or dilute any intellectual property of any third party which infringement, violation, misappropriation or dilution could reasonably be expected to have a Material Adverse Effect. To the knowledge of Holdings, Company or any of its Subsidiaries, no third party is infringing upon or misappropriating, violating or otherwise diluting any Intellectual Property where such infringement, misappropriation, violation or dilution could reasonably be expected to have a Material Adverse Effect. Neither Holdings, Company nor any of its Subsidiaries is enjoined from using any material Intellectual Property, and except as could reasonably be expected to have a Material Adverse Effect, there is no

pending or, to the knowledge of Holdings, Company or any of its Subsidiaries, threatened claim or litigation contesting (i) any right of Company or any of its Subsidiaries to own or use any Intellectual Property, or (ii) the validity or enforceability of any Intellectual Property.

4.14 Environmental Matters. Except as set forth in Schedule 4.14 hereto: (i) neither Holdings nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity which individually or in the aggregate would reasonably be expected to have a Material Adverse Effect; (ii) as of the Closing Date, or except as otherwise reported to the Administrative Agent after the Closing Date, neither Holdings nor any of its Subsidiaries has received within the last ten (10) years any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604), or any comparable state law; (iii) there are and, to each of Holdings' and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which would reasonably be expected to form the basis of an Environmental Claim against Holdings or any of its Subsidiaries, which individually or in the aggregate would reasonably be expected to have a Material Adverse Effect; and (iv) neither Holdings nor any of its Subsidiaries nor, to any Credit Party's knowledge, any predecessor of Holdings or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Holdings' or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent, which individually or in the aggregate would reasonably be expected to have a Material Adverse Effect. Notwithstanding anything to the contrary in this Section 4.14, compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect and no event or condition has occurred or is occurring with respect to Holdings or any of its

Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity, including, without limitation, any matter included in Schedule 4.14, which individually or in the aggregate has had, or would reasonably be expected to have, a Material Adverse Effect.

4.15 No Defaults. Neither Holdings nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations or covenants contained in (i) any of its Contractual Obligations (other than the Credit Documents and the Term Loan Documents), and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect and (ii) any Credit Document and any Term Loan Document.

4.16 Governmental Regulation. Neither Holdings nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable.

Neither Holdings nor any of its Subsidiaries is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

4.17 Margin Regulations. Neither Holdings nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of the Loans nor the pledge of the Collateral pursuant to the Collateral Documents, violates Regulation T, U or X of the Board of Governors of the Federal Reserve System. No part of the proceeds of the Loans made to such Credit Party will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of said Board of Governors.

4.18 Employee Matters. Neither Holdings nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. Except as set forth in Schedule 4.18, there is (a) no unfair labor practice complaint pending against Holdings or any of its Subsidiaries, or to the best knowledge of Holdings and Company, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Holdings or any of its Subsidiaries or to the best knowledge of Holdings and Company, threatened against any of them, and the hours worked by and payments made to employees of Holdings or any of its Subsidiaries have not violated the Fair Labor Standards Act or any other law dealing with such matters, (b) no strike or work stoppage in existence or threatened involving Holdings or any of its Subsidiaries, and (c) to the best knowledge of Holdings and Company, no union representation question existing with respect to the employees of Holdings or any of its Subsidiaries and, to the best knowledge of Holdings and Company, no union organization activity that is taking place; which in each case in clause (a), (b) or (c) above (including, without limitation, any matter included in Schedule 4.18), could either individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

4.19 Employee Benefit Plans. Holdings, each of its Subsidiaries and each of their respective ERISA Affiliates are in material compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan in all material respects. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which reasonably would be expected to cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or reasonably is expected to be incurred by Holdings, any of its Subsidiaries or any of their ERISA Affiliates. Except as set forth in Schedule 4.19 (and

except for changes in matters identified in Schedule 4.19 that are not, individually or in the aggregate, material), no ERISA Event has occurred or is reasonably expected to occur. Except as set forth in Schedule 4.19, and except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates. Except as set forth in Schedule 4.19 (and except for changes in matters identified in Schedule 4.19 that are not, individually or in the aggregate, material), the present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Holdings, any of its Subsidiaries or any of their ERISA Affiliates, (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. Neither Holdings, its Subsidiaries nor their respective ERISA Affiliates maintains, contributes to or is required to contribute to any Multiemployer Plan.

4.20 Certain Fees. Except as otherwise disclosed in writing to Administrative Agent and Arranger, no broker’s or finder’s fee or commission will be payable with respect hereto or any of the transactions contemplated hereby, and Company hereby indemnifies Lenders, Agents and Arranger against, and agrees that it will hold Lenders, Agents and Arranger harmless from, any claim, demand or liability for any such broker’s or finder’s fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

4.21 Solvency. Each Borrower is, and Holdings and its Subsidiaries (on a consolidated basis), are, and, upon the incurrence of any Obligation by any Credit Party on any date on which this representation and warranty is made, will be, Solvent.

4.22 Collateral.

(a) Collateral Documents. The security interests created in favor of Collateral Agent under the Collateral Documents constitute, as security for the obligations purported to be secured thereby, a legal, valid and enforceable security interest in all of the Collateral referred to therein in favor of Collateral Agent for the benefit of the Lenders. The security interests in and Liens upon the Collateral described in the Collateral Documents are valid and perfected First Priority or Second Priority Liens (in accordance with the priorities set forth in the Intercreditor Agreement) to the extent such security interests and Liens can be perfected by such filings and recordations. No consents, filings or recordings are required in order to perfect (or maintain the perfection or priority of) the security interests purported to be created by any of the Collateral Documents, other than (i) such as have been obtained and which remain in full force and effect, (ii) the periodic filing of UCC continuation statements in respect of UCC financing statements filed by or on behalf of Collateral Agent, and (iii) with respect to such items of Collateral as to

which this Agreement or the Collateral Documents do not require any consent, filing or recordation.

(b) Absence of Third Party Filings. Except such as may have been filed in favor of Collateral Agent as contemplated by Section 4.23(a) above and except as set forth on Schedule 4.22 annexed hereto or, after the Closing Date, as may have been filed with respect to a Lien permitted by Section 6.2, (i) no effective UCC

financing statement, fixture filing or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office and (ii) no effective filing with respect to a Lien covering all or any part of the Collateral is on file with the United States Patent and Trademark Office or United States Copyright Office or any other Governmental Authority.

4.23 Disclosure. No representation or warranty of Holdings and its Subsidiaries contained in any Credit Document or in any other documents, certificates or written statements furnished to Lenders by or on behalf of Holdings or any of its Subsidiaries for use in connection with the transactions contemplated hereby or thereby contains any untrue statement of a material fact or omits (when taken as a whole) to state a material fact (known to Holdings or Company, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Holdings or Company to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There is no fact known to Holdings or Company (other than matters of a general economic nature) that, individually or in the aggregate, has had, or could reasonably be expected to result in, a Material Adverse Effect and that has not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

4.24 Deposit Accounts

Annexed hereto as Schedule 4.24 is a list of all Deposit Accounts maintained by the Credit Parties as of the Closing Date, which Schedule includes, with respect to each deposit account (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository.

SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that so long as any Commitment is in effect and until payment in full of all Obligations and cancellation or expiration of all Letters of Credit,

each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1 Financial Statements and Other Reports. Holdings will deliver to Administrative Agent and Collateral Agent for each Lender:

(a) [RESERVED];

(b) Quarterly Financial Statements. Within two (2) Business Days after the date on which Holdings files or is required to file its Form 10-Q under the Exchange Act (but without giving effect to any extension pursuant to Rule 12b-25 under the Exchange Act (or any successor rule) or otherwise) (or, if Holdings is not required to file a Form 10-Q under the Exchange Act, within fifty (50) days after the end of each of the first three Fiscal Quarters of each Fiscal Year (commencing with the Fiscal Quarter ending June 30, 2007)), (i) the consolidated and consolidating balance sheets of Holdings and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated (and with respect to statements of income, consolidating) statements of income and cash flows of Holdings and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all prepared in accordance with GAAP and in reasonable detail and certified by the chief financial officer, senior vice president-finance, treasurer or controller of Company or Holdings that they fairly present, in all material respects, the consolidated financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and the absence of footnotes, and (ii) a narrative report describing the financial condition and results of operations of Holdings and its Subsidiaries for such Fiscal Quarter in form and substance reasonably satisfactory to Administrative Agent;

(c) Annual Financial Statements. Within two (2) Business Days after the date on which the Holdings files or is required to file its Form 10-K under the Exchange Act (but without giving effect to any extension pursuant to Rule 12b-25 under the Exchange Act (or any successor rule) or otherwise) (or, if Holdings is not required to file a Form 10-K under the Exchange Act, within one hundred (100) days after the end of each Fiscal Year (commencing with the Fiscal Year ending December 31, 2007)), (i) the consolidated and consolidating balance sheets of Holdings and its Subsidiaries as at the end of such Fiscal Year and the related consolidated (and with respect to statements of income, consolidating) statements of income, stockholder's equity and cash flows of Holdings and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, all prepared in accordance with GAAP and in reasonable detail and certified by the chief financial officer, senior vice president-finance, treasurer or controller of Company or Holdings that they fairly present, in all material respects, the consolidated financial condition of

Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, and (ii) a narrative report describing the financial condition and results of operations of Holdings and its Subsidiaries in form and substance reasonably satisfactory to Administrative Agent; (iii) with respect to such consolidated financial statements a report thereon of independent certified public accountants of recognized national standing selected by Holdings, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) together with a written statement by such independent certified public accountants stating (1) that their audit examination has included a review of the terms of the Credit Documents, and (2) whether, in connection therewith, any condition or event that constitutes a Default or an Event of Default under Section 6.8 or otherwise with respect to accounting matters has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof;

(d) Compliance Certificate. Together with each delivery of financial statements of Holdings and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the financial statements referred to in Section 4.7, the consolidated financial statements of Holdings and its Subsidiaries delivered pursuant to Section 5.1(b) or 5.1(c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance reasonably satisfactory to Administrative Agent;

(f) Notice of Default, etc. Promptly upon, and in any event within five (5) days after, any officer of Holdings or any of its Subsidiaries obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Holdings or any of its Subsidiaries with respect thereto; (ii) that any Person has given any notice to Holdings or any of its Subsidiaries or taken any other action with respect to any claimed default or event or condition of the type referred to in Section 8.1(b); (iii) of the occurrence of any event or change that has caused or evidences or would reasonably be expected to have, either in any case or in the aggregate, a Material Adverse Effect; or (iv) the occurrence of a Liquidity Event, a certificate of its Authorized Officers specifying the nature and period of existence of

such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or

condition, and what action Holdings or the applicable Subsidiary has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon, and in any event within five (5) days after, any officer of Holdings or any of its Subsidiaries obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Company to Lenders, or (ii) any material development in any Adverse Proceeding that, in the case of either (i) or (ii) if adversely determined, could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Holdings or any of its Subsidiaries to enable Lenders and their counsel to evaluate such matters;

(h) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan and (2) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(i) Financial Plan. As soon as practicable and in any event no later than the 90 days after the beginning of each Fiscal Year, a monthly consolidated and consolidating plan and financial forecast for such Fiscal Year (a '**Financial Plan**"), including a forecasted consolidated balance sheet and forecasted consolidated and consolidating statements of income and consolidated statement of cash flows of Holdings and its Subsidiaries for such Fiscal Year, together with pro forma Compliance Certificates for each such Fiscal Year and an explanation of the assumptions on which such forecasts are based;

(j) Insurance Report. As soon as practicable and in any event by the last day of each calendar year, a report in form and substance reasonably satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such report by Holdings and its Subsidiaries and all material insurance coverage planned to be maintained by Holdings and its Subsidiaries in the immediately succeeding calendar year;

(k) Accountants' Reports. Promptly upon receipt thereof (unless restricted by applicable professional standards), copies of all reports submitted to Holdings or Company by independent certified public accountants in connection with each annual, interim or special audit of the financial statements of Holdings and its Subsidiaries made by such accountants, including

any comment letter submitted by such accountants to management in connection with their annual audit;

(l) Fixed Charge Coverage Compliance Certificate. A Fixed Charge Coverage Compliance Certificate relating to the Minimum Fixed Charge Coverage Ratio for the most recently ended four Fiscal Quarter period for which financial statements are required to have been delivered hereunder, (i) within two Business Days after the occurrence of any Liquidity Event (A) for which a Liquidity Event Cure Notice has not been properly delivered as required by Section 8.2 within ten (10) (or, if applicable, fifteen (15)) days after the occurrence of such Liquidity Event, (B) for which a Liquidity Event Cure Notice was properly delivered and a Liquidity Event Cure did not occur in accordance with Section 8.2 or (C) for which no Liquidity Event Cure Notice is available and (ii) on the fifteenth day of each calendar month after such Liquidity Event occurred (but only if such Liquidity Event exists on such date);

(m) Environmental Reports and Audits. As soon as practicable following receipt thereof, copies of all environmental audits and reports, whether prepared by personnel of Company or any of its Subsidiaries or by independent consultants, with respect to environmental matters at any Facility or which relate to any environmental liabilities of Holdings or its Subsidiaries which, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(n) Other Information. (A) Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by Holdings to holders of its Indebtedness or to holders of its public equity securities or by any Subsidiary of Holdings to its security holders other than Holdings or another Subsidiary of Holdings, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by Holdings or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, (iii) all press releases and other statements made available generally by Holdings or any of its Subsidiaries to the public concerning material developments in the business of Holdings or any of its Subsidiaries, and (B) such other information and data with respect to Holdings or any of its Subsidiaries (including, without limitation, financial statements with respect to Holdings and its Subsidiaries) as from time to time may be reasonably requested by Administrative Agent or any Lender;

(o) Borrowing Base Certificate. (i) No later than the 15th day of each calendar month, a certificate in the form of Exhibit L (a '**Borrowing Base Certificate**") showing the Borrowing Base as of the close of business on the immediately preceding calendar month, each Borrowing Base Certificate to be certified as complete and correct in all material respects on behalf of the Borrowers by the chief financial officer of the Borrower Representative, provided that if an Event of Default has occurred and is continuing, at Administrative Agent's or Collateral Agent's request, such Borrowing Base Certificate shall be furnished more frequently than monthly, at intervals to be determined in Administrative Agent's and Collateral Agent's collective discretion (but in no case more frequently than weekly); and provided further that if a

Liquidity Event has occurred and is continuing or existed within the preceding 30 days, the Borrowing Base shall be computed weekly and Holdings shall deliver the Borrowing Base Certificate to the Administrative Agent and the Collateral Agent no later than three Business Days following the end of each week;

(p) Collateral Reports.

(i) No later than the 15th day of each calendar month, and at such other times as may be requested by the Collateral Agent, as of the period then ended:

(1) a detailed aging of the Accounts of the Borrowers (A) including all invoices aged by due date (with an explanation of the terms offered) and (B) reconciled to the Borrowing Base Certificate delivered as of such date prepared in a manner reasonably acceptable to the Administrative Agent and Collateral Agent, together with a summary specifying the name, address, and balance due for each Account Debtor;

(2) a schedule detailing the Inventory of the Borrowers, in form reasonably satisfactory to the Collateral Agent, (A) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material

and finished goods), by product type, and by volume on hand, which Inventory shall be valued at the lower of Cost or market and adjusted for Reserves as the Collateral Agent has previously indicated to the Borrower Representative, (B) including a report of any variances or other results of Inventory counts performed by the Borrowers since the last Inventory schedule delivered pursuant to this Section 5.1(p)(i), and (C) reconciled to the Borrowing Base Certificate delivered as of such date;

(3) a worksheet of calculations prepared by the Borrower Representative to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(4) a reconciliation of the Accounts and Inventory of the Borrowers between the amounts shown in theBorrowers' general ledger and financial statements and the reports delivered pursuant to clauses (1) and (2) above;

(5) a reconciliation of the loan balance per the Borrowers' general ledger to the loan balance under this Agreement; and

(6) as of the month then ended, a schedule and aging of the Borrowers' accounts payable.

(ii) reasonably promptly upon a request by the Administrative Agent or Collateral Agent in their good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment:

(1) copies of invoices in connection with the invoices issued by the Borrowers in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto; and

(2) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory purchased by any Borrowers.

(q) during such times, if any, as Borrowing Base Certificates are deliverable on a weekly basis pursuant to clause (o) above, as soon as available but in any event within three Business Days after the end of each calendar week and at such other times as may be requested by the Collateral Agent, as of the period then ended, a rollforward of the Borrowers sales journal, cash receipts journal (identifying trade and non-trade cash receipts) and debit memo/credit memo journal.

5.2 Existence. Except as otherwise permitted under Section 6.9, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect (i) its existence and (ii) all rights and franchises, licenses and permits material to the business of Holdings and its Subsidiaries (on a consolidated basis).

5.3 Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable which, if unpaid, might become a Lien upon any of its properties or assets; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made

therefor. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Holdings or any of its Subsidiaries).

5.4 Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties owned by Holdings, Company or its Subsidiaries or used or useful in the business of Company and its Subsidiaries (including all Intellectual Property) and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5 Insurance. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Company and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name the Administrative Agent, the Collateral Agent and the Lenders as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names the Collateral Agent, on behalf of Lenders as the loss payee thereunder and provides for at least thirty (30) days' prior written notice to Collateral Agent of any modification or cancellation of such policy.

5.6 Inspections; Appraisals; and Inventories.

(a) Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by Administrative Agent, Collateral Agent or any Lender (and, in the case of any Lender, accompanied by Administrative Agent or Collateral Agent) to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect the Collateral, or otherwise to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their properties, assets, affairs, finances and accounts with its and their officers and independent public accountants (it being understood that, prior to the occurrence and continuance of an Event of Default, (x) any such

discussions or meetings shall be limited to Administrative Agent and Collateral Agent and (y) in the case of discussions or meetings with the independent public accountants, only if Company has been given the opportunity to participate in such discussions or meetings), all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

(b) Upon the request of the Administrative Agent or the Collateral Agent not more frequently than once per year after reasonable prior notice, permit the Collateral Agent or professionals (including investment bankers, consultants, accountants, lawyers and appraisers) retained by the Collateral Agent to conduct Inventory Appraisals and commercial finance examinations, including, without limitation, of (i) the Borrowers' practices in the computation of the Borrowing Base, and (ii) the assets

included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. Subject to the following sentences, the Credit Parties shall pay the reasonable fees and expenses of the Collateral Agent or such professionals with respect to such evaluations and appraisals. Without limiting the foregoing, during any period in which Excess Availability has been less than $12.0 million for five (5) consecutive days, the Credit Parties acknowledge that the Administrative Agent and Collateral Agent may undertake, in the aggregate, up to two (2) inventory appraisals and two (2) commercial finance examinations each Fiscal Year, at the Credit Parties' expense. Notwithstanding the foregoing, the Collateral Agent may cause additional Inventory Appraisals and commercial finance examinations to be undertaken as it in its discretion deems necessary or appropriate, at the expense of the Lenders, or if an Event of Default or Liquidity Event shall have occurred and be continuing, at the expense of the Credit Parties.

(c) Upon the request of the Collateral Agent after reasonable prior notice, cause at least one (1) physical inventory at each of the Credit Parties' locations to be undertaken in each twelve (12) month period conducted by such inventory takers as are satisfactory to the Collateral Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be reasonably acceptable to the Collateral Agent. The Borrower Representative, within thirty (30) days following the completion of such inventory, shall provide the Collateral Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory undertaken by a Credit Party).

(d) Prior to the effectiveness of any person becoming an Additional Co-Borrower hereunder, an Inventory Appraisal, a written report regarding the results of a commercial finance examination and/or appraisal in respect of any Real Estate Assets owned by such proposed Additional Co-Borrower, in each case, conducted by an independent appraisal firm reasonably acceptable to the Collateral Agent.

5.7 Lenders Meetings. Holdings and Company will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent and Lenders once during each calendar year to be held at Company's corporate offices (or at such

other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Company and Administrative Agent.

5.8 Compliance with Laws. Each Credit Party will comply, and shall cause each of its Subsidiaries to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.9 Environmental.

(a) Environmental Disclosure. Each Credit Party will, and will cause each of its Subsidiaries to, deliver to Administrative Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all material environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Holdings or any of its Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims; provided, however, that this Section 5.9(a)(i) shall not apply to communications covered by valid claims of attorney client privilege or to attorney work product generated by legal counsel to Holdings or any of its Subsidiaries;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (2) any remedial action taken by Holdings or any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (3) Holdings or any of its Subsidiaries' discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Holdings or any of its Subsidiaries, a copy of any and all written communications to or from any Governmental Authority or any Person bringing an Environmental Claim against Holdings or any of its Subsidiaries with respect to: (1) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (2) any Release required to be reported to any Governmental Authority, and (3) any written request for information from any Governmental Authority stating such Governmental Authority is investigating whether Holdings or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity; and

(iv) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this Section 5.9(a).

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.10 Subsidiaries. In the event that any Person becomes a Domestic Subsidiary of Company, Company shall (a) promptly, and in any event within ten (10) days, cause such Domestic Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative Agent and Collateral Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all Perfection Deliverables and such documents, instruments, agreements, opinions and certificates as are similar to those described in Sections 3.1(b) and 3.1(f), and any other actions required by the Pledge and Security Agreement. In the event that any Person becomes a Foreign Subsidiary of Company, and the ownership interests of such Foreign Subsidiary are owned by Company or by any Domestic Subsidiary thereof, Company shall, or shall cause such Domestic Subsidiary to, promptly, and in any event within ten (10) days, deliver all such documents, instruments, agreements, and certificates as are similar to those described in Section 3.1(b), and Company shall take, or shall cause such Domestic Subsidiary to take, all of the actions referred to in clause (i) of the definition of "Perfection Deliverables" necessary to grant and to perfect a First Priority or Second Priority Lien (in accordance with the priorities set forth in the Intercreditor Agreement) in favor of Collateral Agent, for the benefit of Secured Parties, under the Pledge and Security Agreement in 66% of such ownership interests.

With respect to each such Subsidiary, Company shall promptly send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Company, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Company; provided, such written notice upon Administrative Agent's approval of the contents therein shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof. Notwithstanding anything to the contrary in this Section 5.10, the requirements of this Section 5.10 shall not apply to any property or Subsidiary created or acquired after the Closing Date, as to which the Collateral Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein. The Collateral Agent is hereby authorized by the Lenders to enter into such amendments to the Collateral Documents as the Collateral Agent deems necessary to effectuate the provisions of this Section 5.10.

5.11 Additional Real Estate Assets. In the event that any Credit Party acquires, or any Person that becomes a Credit Party holds, a Real Estate Asset that is (a) a fee interest with a fair market value equal to or greater than $500,000 or (b) a leasehold interest with a value that Administrative Agent in its sole discretion, after consultation with Company, determines is material, and such interest has not otherwise been made subject to a perfected First Priority or Second Priority Lien (in accordance with the priorities set forth in the Intercreditor Agreement) of the Collateral Documents in favor of Collateral Agent, for the benefit of Secured Parties, then such Credit Party shall, promptly, and in any event within ten (10) days of such Credit Party acquiring such Real Estate Asset or such Person becoming a Credit Party, take all such actions and execute and deliver, or cause to be executed and delivered, all Real Estate Asset Deliverables and Perfection Deliverables with respect to each such Real Estate Asset to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority or Second Priority Lien (in accordance with the priorities set forth in the Intercreditor Agreement) in such Real Estate Assets, and reports and other information reasonably satisfactory to Administrative Agent regarding environmental matters (including, without limitation, a Phase I Report) with respect to such Real Estate Assets. In addition to the foregoing, Company shall, at the request of Requisite Lenders, deliver, from time to time (but, prior to the occurrence and during the continuance of a Default or Event of Default, not more than once every two calendar years), to Administrative Agent such appraisals of Real Estate Assets with respect to which Collateral Agent has been granted a Lien. Notwithstanding anything to the contrary in this Section 5.11, the requirements of this Section 5.11 shall not apply to any Real Estate Asset acquired after the Closing Date, as to which the Collateral Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein. The Collateral Agent is hereby authorized by the Lenders to enter into such amendments to the Collateral Documents as the Collateral Agent deems necessary to effectuate the provisions of this Section 5.11.

5.12 [Reserved].

5.13 Further Assurances. At any time or from time to time upon the request of Administrative Agent or Collateral Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guarantied by the Guarantors and are secured by substantially all of the assets of Holdings, and its Subsidiaries and all of the outstanding Capital Stock of Company and its Subsidiaries (in each case subject to limitations contained in the Credit Documents with respect to Foreign Subsidiaries).

5.14 ERISA. Neither Holdings, its Subsidiaries or their respective ERISA Affiliates shall establish, maintain, contribute to, or become required to contribute to any Multiemployer Plan.

5.15 Cash Management

(a) The Credit Parties shall deliver, or cause to be delivered, to Collateral Agent a Blocked Account Agreement duly authorized, executed and delivered by each bank where a Deposit Account for the benefit of any Credit Party is maintained. Each Borrower shall further execute and deliver, and shall cause each Guarantor to execute and deliver, such agreements and documents as Collateral Agent may reasonably require in connection with such Blocked Accounts and such Blocked Account Agreements. Other than Excluded Deposit Accounts, no Credit Party shall establish any Deposit Accounts after the Closing Date, unless such Borrower or Guarantor (as applicable) has complied in full with the provisions of this Section 5.15(a) with respect to such Deposit Accounts. Each Blocked Account Agreement shall require, after notice from the Collateral Agent to a Blocked Account Bank (which the Collateral Agent agrees will only be given after the occurrence of an Account Control Event) (and until the Collateral Agent notifies such Blocked Account Bank to the contrary (which the Collateral Agent agrees will be given promptly after the written request of the Borrower Representative if such Account Control Event has terminated), the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the collection account maintained by the Collateral Agent at JPMorgan Chase Bank, N.A. (the "**Collection Account**"), of all cash receipts and collections, including, without limitation, the following:

(i) all available cash receipts from the sale of Inventory and other assets;

(ii) all proceeds of collections of Accounts;

(iii) all Net Asset Sale Proceeds and Net Insurance/Condemnation Proceeds, and all other cash payments received by a Credit Party

from any Person or from any source or on account of any sale or other transaction or event;

(iv) the then contents of each Deposit Account;

(v) the then entire ledger balance of each Blocked Account; and

(vi) the net proceeds of all credit card charges.

(b) The Collection Account shall at all times be in the name, and under the sole dominion and control of the Collateral Agent. The Credit Parties hereby acknowledge and agree that (i) the Credit Parties have no right of withdrawal from the Collection Account, (ii) the funds on deposit in the Collection Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Collection Account shall be applied as provided in this Agreement. In the event that, notwithstanding the provisions of this Section 5.15, any Credit Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Credit Party for the Collateral Agent, shall not be commingled with any of such Credit Party's other funds or deposited in any account of such Credit Party and shall, not later than the Business Day after receipt thereof, be deposited into the Collection Account or dealt with in such other fashion as such Credit Party may be instructed by the Collateral Agent.

SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations and cancellation or expiration of all Letters of Credit, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1 Indebtedness. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Company may become and remain liable with respect to Indebtedness to any of its wholly-owned Guarantor Subsidiaries, and any wholly-owned Guarantor Subsidiary of Company may become and remain liable with respect to Indebtedness to Company or any other wholly-owned Guarantor Subsidiary of Company; provided, (i) all such Indebtedness under this subclause (b) shall be (x) evidenced by promissory notes and all such notes shall be subject to a First Priority or Second Priority Lien (in accordance with the priorities set forth in the

Intercreditor Agreement) pursuant to the Pledge and Security Agreement and (y) unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to Administrative Agent, and (ii) any payment by any such Subsidiary under any guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Indebtedness owed by such Subsidiary to Company or to any of its Subsidiaries for whose benefit such payment is made;

(c) [RESERVED];

(d) Indebtedness of Company and its Subsidiaries arising in respect of netting services or overdraft protections with deposit accounts; provided, that such Indebtedness is extinguished within three (3) Business Days of its incurrence;

(e) guaranties by Company of Indebtedness of a Guarantor Subsidiary or guaranties by a Subsidiary of Company of Indebtedness of Company or a Guarantor Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1;

(f) Indebtedness of Company and its Subsidiaries existing on the Closing Date and described in Schedule 6.1, but not any extensions, renewals, refinancings or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not materially less favorable (taken as a whole) to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced or (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced;

(g) purchase money Indebtedness of Company and its Subsidiaries and Capital Leases (other than in connection with sale-leaseback transactions) of Company and its Subsidiaries, in each case incurred in the ordinary course of business to provide all or a portion of the purchase price or cost of construction of an asset or an improvement of an asset not constituting part of the Collateral; provided, that (A) such Indebtedness when incurred shall not exceed the purchase price or cost of improvement or construction of such asset, (B) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing, (C) such Indebtedness shall be secured only by the asset acquired, constructed or improved in connection with the incurrence of such Indebtedness and (D) the aggregate principal amount of all such Indebtedness shall not exceed $7,500,000 at any time outstanding;

(h) other Indebtedness of Company and its Subsidiaries, which is unsecured, in an aggregate principal amount not to exceed $10,000,000 at any time outstanding;

(i) Indebtedness of Company under any Interest Rate Agreement or Currency Agreement entered into for hedging purposes and in form and substance reasonably satisfactory to the Administrative Agent;

(j) Indebtedness evidenced by the Term Loan Documents in an aggregate amount not to exceed an amount equal to $125.0 million less the amount of all mandatory or scheduled payments thereon incurred pursuant to the Term Loan Facility and any Permitted Refinancing thereof;

(k) additional senior unsecured or subordinated unsecured Indebtedness, the terms and conditions of which (i) shall provide for a maturity date at least one year after the Maturity Date hereunder and with no scheduled amortization or other scheduled payments of principal prior to such date, and (ii) shall otherwise be reasonably satisfactory to Administrative Agent; provided, that (A) after giving pro forma effect to the incurrence of such Indebtedness (and, if applicable, giving pro forma effect to any Subject Transaction pursuant to Section 6.8(c)), (1) the Leverage Ratio is not greater than 4.0 to 1.0 or (2) the Consolidated Coverage Ratio is at least 2.0 to 1.0 and (B) no Default or Event of Default has occurred or is continuing at the time of incurrence or would result therefrom;

(l) Indebtedness of a Person existing at the time such Person becomes a Subsidiary of Company following the Closing Date, which Indebtedness is in existence at the time such Person becomes a Subsidiary and is not created in connection with or in contemplation of such Person becoming a Subsidiary; provided that the aggregate principal amount of all such Indebtedness in the aggregate shall not exceed $5,000,000 at any time outstanding;

(m) Indebtedness of Holdings which is unsecured and subordinated to the Obligations in a manner satisfactory to Administrative Agent and which is issued in connection with the redemption or replacement of any preferred Capital Stock of Holdings, in principal amount not to exceed the amount of such preferred Capital Stock being redeemed or replaced, the terms and conditions of which (i) shall provide for a maturity date at least one year after the Maturity Date hereunder, with no scheduled amortization of principal or mandatory prepayments prior to such date, (ii) no scheduled or mandatory cash interest payments prior to such date, except to the extent Holdings has sufficient cash therefor and (iii) shall otherwise be satisfactory to Administrative Agent;

(n) Capital Leases of Company entered into in connection with sale-leaseback transactions permitted by Section 6.3; provided, that (A) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the

time of such refinancing and (B) such Indebtedness shall be secured only by the facility which is the subject of such Capital Lease; and

(o) additional secured Indebtedness, the terms and conditions of which (i) shall provide for a maturity date at least one year after the Maturity Date

hereunder and with no scheduled amortization of principal prior to such date, (ii) unless reasonably satisfactory to the Administrative Agent pursuant to clause (iii) below, shall be no more restrictive (without taking into account fees or interest rates), taken as a whole, than those set forth in the Term Loan Documents as in effect on the Closing Date, and (iii) shall otherwise be reasonably satisfactory to Administrative Agent; provided, that (A) after giving pro forma effect to the incurrence of such Indebtedness (and, if applicable, giving pro forma effect to any Subject Transaction pursuant to Section 6.8(c)), the Secured Debt Ratio is less than 2.5 to 1.0 and (B) no Default or Event of Default has occurred or is continuing at the time of incurrence or would result therefrom.

Liens. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Holdings, Company or any such Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens imposed by law for Taxes that are not yet required to be paid pursuant to Section 5.3;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five (5) days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness),

so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, minor defects or irregularities in title and other similar charges, in each case which do not and will not interfere in any material respect with the use or value thereof;

(f) any interest or title of a lessor or sublessor under any operating or true lease of real estate entered into by Company or its Subsidiaries in the ordinary course of its business covering only the assets so leased;

(g) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(h) any attachment or judgment Lien not constituting an Event of Default under Section 8.1(h);

(i) non-exclusive licenses of Intellectual Property granted by Company or any of its Subsidiaries in the ordinary course of business consistent with past practice and not interfering in any respect with the ordinary conduct of the business of Company or such Subsidiary;

(j) bankers liens and rights of set-off with respect to customary depositary arrangements entered into in the ordinary course of business of Company and its Subsidiaries;

(k) Liens granted by Company or its Subsidiaries existing on the Closing Date and described in Schedule 6.2; provided, that (A) no such Lien shall at any time be extended to cover property or assets other than the property or assets subject thereto on the Closing Date and (B) the principal amount of the Indebtedness secured by such Liens shall not be extended, renewed, refunded, replaced or refinanced except as otherwise permitted by Section 6.1(f);

(l) Liens securing (i) Indebtedness permitted pursuant to Section 6.1(g), provided, any such Lien shall encumber only the asset acquired, constructed or improved with the proceeds of such Indebtedness and (ii) Indebtedness permitted pursuant to Section 6.1(n), provided any such Lien shall encumber only the facility with is the subject of such Capital Lease;

(m) Liens securing Indebtedness permitted under Section 6.1(l); provided that such Liens are of a type described in Section 6.2(l)(i) and are not created in contemplation of or in connection with such Person becoming a Subsidiary, such Liens will not apply to any other

property of Holdings or any of its Subsidiaries, and such Liens will secure only those obligations secured by such Liens on the date such Person becomes a Subsidiary; and

(n) Liens securing Indebtedness permitted under Section 6.1(j) or 6.1(o).

Sales and Leasebacks. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which Holdings or any of its Subsidiaries has sold or transferred or is to sell or transfer to any other Person (other than Holdings or any of its Subsidiaries) or (b) which Holdings or any of its Subsidiaries intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than Holdings or any of its Subsidiaries) in connection with such lease; provided that Company and its Subsidiaries may (i) become and remain liable as lessee, guarantor or other surety with respect to any such lease which is a Capital Lease permitted pursuant to Section 6.1(g), and (ii) so long as no Default or Event of Default has occurred or is continuing or shall be caused thereby, sale-leaseback transactions in respect of any manufacturing Facilities owned by Company as of the Closing Date; provided, further, that (A) the material terms and conditions of such sale-leaseback transaction (including any Capital Lease in connection with such transaction) shall be reasonably satisfactory to the Administrative Agent, (B) Collateral Agent is granted a valid First Priority or Second Priority Lien (in accordance with priorities set forth in the Intercreditor Agreement) in Company's leasehold interest in connection with such transaction, (C) the lessor (or lenders under any Capital Lease) in connection with such transaction shall agree to provide Collateral Agent access to the Collateral located at such facility pursuant to an agreement reasonably satisfactory to Administrative Agent and the Collateral Agent (the terms of which shall include subordination and non-disturbance provisions with respect to any such Collateral, and other terms as may be reasonably required by Administrative Agent or the Collateral Agent), (D) the amount of consideration payable to Company or its Subsidiaries (and the aggregate principal amount of Indebtedness in respect of any Capital Leases) in any such transaction shall not exceed the fair market value of any such facility (determined in good faith by the board of directors of Company (or similar governing body)), and shall not exceed $30,000,000 in the aggregate and (E) the Net Asset Sale Proceeds with respect to any such Capital Lease shall be applied to repay indebtedness under the Term Loan Facility if and to the extent required thereunder.

No Further Negative Pledges. Except (i) pursuant to this Agreement, (ii) pursuant to the terms of Indebtedness permitted under Section 6.1(h), 6.1(j), 6.1(k) or

6.1(o), (iii) with respect to specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale, (iv) pursuant to customary non-assignment or no-subletting clauses in leases, licenses or contracts entered into in the ordinary course of business, which restrict only the assignment of such lease, license or contract, as applicable, or (v) in connection with purchase money financing or Capital Leases permitted under Section 6.1(g), 6.1(l) or 6.1(n) (in each case provided the prohibition applies

only to the asset being acquired or constructed, or which is the subject of such Capital Lease), each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

Restricted Payments. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries or Affiliates through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Payment except that:

(a) Subsidiaries of Company may make Restricted Payments (i) to Company or to any parent entity of such Subsidiary which is a wholly-owned Guarantor Subsidiary and (ii) so long as no Liquidity Event or Default or Event of Default has occurred and is then continuing, on a pro rata basis to the equity holders of any other Guarantor Subsidiary;

(b) (i) so long as no Liquidity Event or Default or Event of Default shall have occurred and be continuing or shall be caused thereby, Company and its Subsidiaries may make prepayments and regularly scheduled payments of principal and interest in respect of any Indebtedness permitted under Sections 6.1(b), (ii) Company and its Subsidiaries may make scheduled payments and mandatory prepayments of principal, and regularly scheduled payments of interest in respect of and, so long as no Liquidity Event or Default or Event of Default shall have occurred and be continuing, voluntary repayments of, any Indebtedness permitted under Section 6.1(h), (iii) Company and its Subsidiaries may make mandatory prepayments and regularly scheduled payments of principal and interest in respect of any Indebtedness permitted under Section 6.1(k) (to the extent constituting subordinated Indebtedness) or 6.1(n), but only to the extent such payments are permitted by the terms, and subordination provisions (if any) applicable to, such Indebtedness, and (iv) Company and its Subsidiaries may make payments in respect of guarantees permitted under Section 6.1(e) to the extent the Indebtedness guaranteed thereby is permitted to be paid under this Section 6.5 (in each case under the foregoing subclauses (i), (ii) and (iii) in accordance with the terms of, and only to the extent required by, and subject to the subordination provisions contained in, the indenture or other agreement pursuant to which such Indebtedness as issued);

(c) Company may make Restricted Payments to Holdings to the extent reasonably necessary to permit Holdings (in each case so long as Holdings applies the amount of any such Restricted Payment for such purpose within five (5) days of receipt of such amount) (i) to pay general administrative and corporate overhead costs and expenses (including, without limitation, expenses arising by virtue of Holdings' status as a public company (including fees and expenses related to filings with the Securities and Exchange Commission, roadshow expenses, printing expenses and fees and expenses of attorneys and auditors)), (ii) so long as no Default or Event of Default, in each case, in respect of Section 8.1(a), 8.1(f) or 8.1(g) shall have occurred and be continuing or shall be caused thereby, to pay the fees and expenses to Sponsor required to be paid under the Management Services Agreement, as in effect on December 16,

2004 or after giving effect to any amendment, restatement or other modification thereto in accordance with Section 6.15(a) hereof, (iii) to discharge the consolidated tax liabilities of Holdings and its Subsidiaries and (iv) so long as no Liquidity Event or Default or Event of Default shall have occurred and be continuing or shall be caused thereby, to allow Holdings to repurchase shares of, or options to purchase shares of, Capital Stock of Holdings from employees, officers or directors of Holdings, Company or any Subsidiaries thereof in any aggregate amount not to exceed $1,000,000 in any calendar year or $5,000,000 in the aggregate since the Closing Date;

(d) (i) Company may make Restricted Payments to Holdings in an aggregate amount not to exceed the Restricted Payment Amount (measured on the date of such Restricted Payment); provided that, notwithstanding the foregoing, in any four Fiscal Quarter period, the Company may make Restricted Payments to Holdings in an amount not to exceed the Periodic Dividend Amount; provided further, that, in any case, any Restricted Payment under this Section 6.5(d)(i) may only be made so long as (w) no Liquidity Event or Default or Event of Default has occurred or is continuing or shall be caused thereby after giving effect to such Restricted Payment, (x) after giving effect to such Restricted Payment, Holdings and its Subsidiaries shall have satisfied the RP Conditions, (y) to the extent Consolidated Adjusted EBITDA for the Test Period most recently ended prior to such Restricted Payment is less than or equal to $40,000,000, after giving effect to such Restricted Payment, the total amount of Restricted Payments made pursuant to this Section 6.5(d)(i) during the Fiscal Quarter in which the subject Restricted Payment is to be paid and the three Fiscal Quarters most recently ended does not exceed any applicable Maximum Restricted Payment Amount, and (z) a Section 6.5(d) Certificate has been delivered; and (ii) Holdings may make Restricted Payments in an amount equal to the actual amount of Restricted Payments made by Company to Holdings pursuant to Section 6.5(d)(i) that have not previously been distributed by Holdings, so long as no Liquidity Event or Default or Event of Default shall have occurred and be continuing or shall be caused thereby; provided, however, that notwithstanding anything to the contrary contained in this Section 6.5(d), this Section 6.5(d)(ii) shall not prohibit the payment of any dividend within 60 days after the date of declaration of such dividend if such dividend was permitted under this Section 6.5(d)(ii) on the date of declaration;

(e) (i) so long as no Default or Event of Default, in each case, in respect of Sections 8.1(a), 8.1(f) or 8.1(g) shall have occurred and be continuing or shall be caused thereby, Holdings may make Restricted Payments to Sponsor to the extent of Restricted Payments received by Holdings from Company pursuant to Sections 6.5(c)(ii) and (ii) so long as no Liquidity Event or Default or Event of Default shall have occurred and be continuing or shall be caused thereby, Holdings may make Restricted Payments (x) as described in Section 6.5(c)(iv) and (y) in respect of Indebtedness permitted by Section 6.1(m) and in connection with the redemption or replacement of any preferred Capital Stock of Holdings described in Section 6.1(m);

(f) additional Restricted Payments in an aggregate amount not to exceed at any time outstanding $10,000,000 (minus any Investments made pursuant to Section 6.7(l)), if no

Liquidity Event or Default or Event of Default has occurred or is continuing or would result therefrom; provided that any Restricted Payment made pursuant to this Section 6.5(f) may not subsequently be characterized as a Restricted Payment made pursuant to any other provision of this Agreement; and

(g) if no Default or Event of Default has occurred or is continuing or would result therefrom, additional Restricted Payments in an aggregate amount not to exceed $25,000,000, which Restricted Payments are funded exclusively by Holdings Equity Proceeds that have not been applied to any other purpose; provided that any Restricted Payment made pursuant this Section 6.5(g) may not subsequently be characterized as a Restricted Payment made pursuant to any other provision of this Agreement.

Restrictions on Subsidiary Distributions. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Company to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or by any other Subsidiary of Company, (b) repay or prepay any Indebtedness owed by such Subsidiary to Company or to any other Subsidiary of Company, (c) make loans or advances to Company or to any other Subsidiary of Company, or (d) transfer

any of its property or assets to Company or to any other Subsidiary of Company other than restrictions (i) existing under this Agreement or the Term Loan Documents (as in effect on the Closing Date), (ii) in agreements evidencing Indebtedness permitted by Sections 6.1(g) and 6.1(l) that impose restrictions on the property so acquired, (iii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, Joint Venture agreements and similar agreements entered into in the ordinary course of business, (iv) restrictions in agreements evidencing Indebtedness secured by Liens permitted by Section 6.2(m) that impose restrictions on the property securing such Indebtedness, (v) customary restrictions on assets that are the subject of an Asset Sale permitted by Section 6.9 or a Capital Lease permitted by Section 6.1(n) and (vi) in agreements evidencing Indebtedness permitted by Section 6.1(h) or 6.1(k), in each case, so long as such restrictions are not more restrictive, taken as a whole, than the restrictions set forth in this Agreement.

Investments. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) Investments by Holdings in Company;

(c) Investments made by Company or any of its Subsidiaries in Subsidiary Guarantors which are wholly-owned Subsidiaries of Company;

(d) Investments received by Company or any of its Subsidiaries in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers or suppliers of such Person, in each case in the ordinary course of business;

(e) accounts receivable arising, and trade credit granted, in the ordinary course of business of Company and its Subsidiaries, and any Securities received by Company or any of its Subsidiaries in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss, and any prepayments and other credits to suppliers made in the ordinary course of business;

(f) intercompany loans to the extent permitted under Section 6.1(b);

(g) Consolidated Capital Expenditures by Company or any of its Subsidiaries permitted by Section 6.8(b);

(h) loans and advances by Company or any of its Subsidiaries to employees of Company and its Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed $2,000,000 at any time outstanding;

(i) Investments by Company or any of its Subsidiaries made in connection with Permitted Acquisitions permitted pursuant to Section 6.9(d);

(j) Investments by Company or any of its Subsidiaries constituting non-Cash consideration received by Company and its Subsidiaries in connection with permitted Asset Sales pursuant to subsection 6.9(c);

(k) Company and its Subsidiaries may continue to own the Investments owned by them as of the Closing Date and described in Schedule 6.7;

(l) other Investments by Company or any of its Subsidiaries in an aggregate amount not to exceed at any time outstanding $10,000,000 (minus any Restricted Payments made pursuant to Section 6.5(f)), if no Liquidity Event or Default or Event of Default has occurred or is continuing or would result therefrom; and

(m) additional Investments by Company or any of its Subsidiaries in an aggregate amount not to exceed the Restricted Payment Amount so long as (i) no Liquidity

Event or Default or Event of Default has occurred or is continuing or shall be caused thereby after giving effect to such Investment and (ii) after giving effect to such Investment, Company and its Subsidiaries shall have satisfied the Investment Conditions.

Notwithstanding the foregoing, in no event shall any Credit Party make any Investment which results in or facilitates in any manner any Restricted Payment not otherwise permitted under the terms of Section 6.5.

Financial Covenants.

(a) Minimum Fixed Charge Coverage Ratio. Upon the occurrence and during the continuance of a Liquidity Event, Company shall not permit the Fixed Charge Coverage Ratio for any Test Period for which a Fixed Charge Coverage Compliance Certificate is required to be delivered to be less than 1.0 to 1.0.

(b) Maximum Consolidated Capital Expenditures. Holdings and Company shall not, and shall not permit its Subsidiaries to, make or incur Consolidated Capital Expenditures, except that Company and any Guarantor Subsidiary may make or incur Consolidated Capital Expenditures (i) during any calendar year in an aggregate amount not in excess of (A) $10,000,000 plus (B) the unused portion of Consolidated Capital Expenditures permitted to be made or incurred in the immediately preceding calendar year (it being understood that the amount under this subclause (B) shall not exceed the lesser of such unused portion and $10,000,000) and (ii) associated with the consolidation of Facilities and costs associated with the acquiring and/or the development and construction of one new manufacturing facility in an aggregate amount not to exceed $15,000,000.

(c) Certain Calculations.

(i) With respect to any period during which a Permitted Acquisition or an Asset Sale has occurred (each, a "**Subject Transaction**"), for purposes of determining compliance with the financial covenants set forth in this Section 6.8 and the Leverage Ratio calculation in Section 6.1(k), Consolidated Adjusted EBITDA and the components of Consolidated Fixed Charges, as applicable, shall be calculated with respect to such period on a pro forma basis (including pro forma adjustments arising out of events which are directly attributable to a specific transaction, are factually supportable and are expected to have a continuing impact, in each case determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Securities Act and as interpreted by the staff of the Securities and Exchange Commission, which would include cost savings resulting from head count reduction, closure

of Facilities and similar restructuring charges, which pro forma adjustments shall be certified by the chief financial officer of Company) using the historical audited financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of Holdings and its Subsidiaries which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period.

(ii) With respect to any period commencing prior to the Closing Date, for purposes of determining compliance with the financial covenants set forth in this Section 6.8, Consolidated Adjusted EBITDA shall be calculated with respect to the portion of such period prior to the Closing Date based on the historical Consolidated Adjusted EBITDA of the Company during such time, Consolidated Capital Expenditures shall be calculated with respect to the portion of such period prior to the Closing Date based on the historical Consolidated Capital Expenditures of the Company during such time, and the other components of Consolidated Fixed Charges (other than Consolidated Interest Expense) shall be calculated with respect to the portion of such period prior to the Closing Date on a pro forma basis as if the Closing Date occurred on the first day of such period.

(iii) With respect to any period commencing prior to the Closing Date, for purposes of determining compliance with the financial covenants set forth in this Section 6.8, Consolidated Interest Expense shall be calculated with respect to the portion of such period prior to the Closing Date on a pro forma basis as if the Closing Date occurred on the first day of such period (and assuming that the Indebtedness incurred on the Closing Date was incurred on the first day of such period and, such Indebtedness bears interest during the portion of such period prior to the Closing Date at the weighted average of the interest rates applicable to outstanding Indebtedness during the portion of such period on and after the Closing Date and that no Indebtedness was repaid during the portion of such period prior to the Closing Date).

Fundamental Changes; Asset Dispositions; Acquisitions. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or

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any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise the business, or all or substantially all of the property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Holdings may be merged with or into Company or with or into any wholly-owned Guarantor Subsidiary of Company, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any wholly-owned Guarantor Subsidiary of Company; provided, in the case of such a merger, Company or such wholly-owned Guarantor Subsidiary of Company, as applicable shall be the continuing or surviving Person;;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non-Cash proceeds consisting of notes or other debt Securities and valued at fair market value in the case of other non-Cash proceeds) (i) do not exceed $5,000,000 in the aggregate in any calendar year and (ii) when aggregated with the proceeds of all other Asset Sales, do not exceed $15,000,000 in the aggregate from the Closing Date to the date of determination; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (and in respect of a transaction of greater than $2,500,000, as determined in good faith by the board of directors of Company (or similar governing body)), (2) no less than 80% thereof shall be paid in Cash, and (3) the Net Asset Sale Proceeds thereof shall be applied in accordance with the Term Loan Facility (to the extent required thereby);

(d) Permitted Acquisitions, the consideration for which constitutes either (i) common Capital Stock of Holdings or (ii) (x) no more than $20,000,000 in the aggregate in any calendar year unless (and subject to clause (y) below) before and after giving effect to any such Permitted Acquisitions the Fixed Charge Coverage Ratio is at least 1.0 to 1.0 for the four Fiscal Quarter period most recently ended, calculated to give effect to such Permitted Acquisition in accordance with Section 6.8(c) as if such Permitted Acquisition occurred on the first day of such four Fiscal Quarter period, as demonstrated in a Fixed Charge Coverage Compliance Certificate delivered to the Administrative Agent prior to such Permitted Acquisition, and (y) no more than $60,000,000 in the aggregate from the Closing Date;

(e) Investments made in accordance with Section 6.7; and

(f) sale and leaseback transactions permitted pursuant to Section 6.3.

Disposal of Subsidiary Interests. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to (a) directly or indirectly issue, sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law or (b) permit any of its Subsidiaries directly or indirectly to issue, sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except (i) Company may issue Capital Stock to Holdings, (ii) Subsidiaries may issue Capital Stock to Company or to a Guarantor Subsidiary of Company (subject to the restrictions on such disposition otherwise imposed under Section 6.9) or to qualify directors if required by applicable law and (iii) Company or any Subsidiary may sell or otherwise dispose of the Capital Stock of its Subsidiaries in an Asset Sale permitted by Section 6.9.

Fiscal Year. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, change its Fiscal Year-end from December 31;provided, that the Fiscal Year-end of Holdings and its Subsidiaries may be changed to the end of any Fiscal Quarter with the prior written consent of, and following receipt of any information requested by, Administrative Agent (including, without limitation, reconciliation statements for the immediately preceding three years described in Section 5.1(e)).

Transactions with Shareholders and Affiliates. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service or the making of any loan) with any holder of 10% or more of any class of Capital Stock of Holdings or any of its Subsidiaries or with any Affiliate of Holdings or of any such holder, on terms that are less favorable to Holdings or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided, the foregoing restriction shall not apply to (a) any transaction expressly permitted under this Agreement; (b) reasonable and customary fees paid to, and customary indemnification of, members of the board of directors (or similar governing body) of Holdings and its Subsidiaries; (c) compensation arrangements for officers and other employees of Holdings and its Subsidiaries entered into in the ordinary course of business; (d) transactions described in Schedule 6.12; and (e) any transaction between Credit Parties.

Conduct of Business. From and after the Closing Date, each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by Company on the Closing Date and similar or related businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

Permitted Activities of Holdings. Holdings shall not (a) incur, directly or indirectly, any Indebtedness other than the Indebtedness (i) under the Credit Documents, (ii) under the the Term Loan Documents and (iii) permitted by Section 6.1(m); (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens created under the Collateral Documents to which it is a party; (c) engage in any business or activity or own any assets other than (i) holding 100% of the Capital Stock of Company; (ii) performing its obligations and activities incidental thereto under the Credit Documents, and

to the extent not inconsistent therewith, the Term Loan Documents; (iii) making Restricted Payments to the extent permitted by Section 6.5 of this Agreement and Section 6.5 of the Term Loan Facility; (iv) making Investments to the extent permitted by Section 6.7 of this Agreement and Section 6.7 of the Term Loan Facility; (v) issuances of its Capital Stock; (vi) conducting activities arising by virtue of its status as a public company, including without limitation, compliance with its reporting obligations and other requirements applicable to public companies; and (vii) retaining Cash in a deposit account subject to a Blocked Account Agreement in the amount of any Restricted Payments received from the Company pursuant to Section 6.5(d)(i); (d) consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person; (e) sell or otherwise dispose of any Capital Stock of any of its Subsidiaries; (f) create or acquire any Subsidiary or make or own any Investment in any Person other than Company; or (g) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

Amendments or Waivers of Certain Agreements.

(a) Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, terminate or agree to any amendment, restatement, supplement or other modification to, or waiver of, any of its rights under any Term Loan Document, any Organizational Document or the Management Services Agreement, or make any payment consistent with an amendment thereof or change thereto (which amendment or other modification, in the case of (i) an Organizational Document or any Term Loan Document, is adverse in any material respect to the rights or interests of the Lenders (provided that with respect to any termination, amendment, restatement, supplement or other modification to, or waiver of any Term Loan Document, none of the following amendments shall be deemed adverse for purposes of this clause (i): (A) payment of customary fees in connection with any amendment or waiver, or (B) any amendment implementing incremental or additional loans and/or commitments under the Term Loan Documents to the extent the Indebtedness in respect thereof is permitted under Section 6.1) and (ii) the Management Services Agreement, involves the imposition of additional fees or any increase in fees payable thereunder (other than as set forth in this Section 6.15) or is adverse in any respect to the rights or interests of the Lenders), without in each case obtaining the prior written consent of Requisite Lenders to such amendment, restatement, supplement or other modification or waiver. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries to, amend or otherwise change the terms of any Indebtedness permitted to be incurred under Section 6.1 which is subordinated to the Obligations, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on or fees in respect of such Indebtedness, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions thereof (or of any guaranty thereof), or change any collateral therefor (other than to release such collateral), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such

Indebtedness (or a trustee or other representative on their behalf) which would be adverse to Holdings or Company, any of their Subsidiaries, or Lenders. Notwithstanding the foregoing, this Section 6.15 shall not apply to any amendment to the Management Services Agreement, or the termination thereof, executed or made in connection with a Qualifying IPO; provided, that the payments made in connection therewith shall not exceed the Qualifying IPO Payment.

Limitation on Payments Relating to Other Debt. Each of Holdings and Company shall not, and shall not permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, make or offer to make, any prepayment, repurchase or redemption of, or otherwise defease, the Indebtedness permitted to be incurred under Section 6.1(k) (such Indebtedness, "**Other Debt**"), or segregate funds for any such prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "**Derivatives Counterparty**") obligating Holdings, the Company or any Subsidiary to make payments to such Derivatives Counterparty as a result of any change in market value of Other Debt, other than (a) any prepayment, repurchase or redemption of Other Debt pursuant to a Permitted Refinancing thereof and (b) prepayments, repurchases or redemptions of Other Debt in an aggregate amount not to exceed the Restricted Payment Amount so long as (i) no Default or Event of Default has occurred or is continuing or shall be caused thereby after giving effect to such payment and (ii) after giving effect to such payment, the Company and its Subsidiaries shall have satisfied the Investment Conditions. Notwithstanding anything to the contrary contained in this Agreement, the Credit Parties are permitted to redeem the Senior Notes pursuant to the Qualifying Senior Notes Redemption. Notwithstanding anything to the contrary contained in this Agreement, Holdings is permitted to prepay, repurchase or redeem Other Debt utilizing Holdings Equity Proceeds that have not been applied to any other purpose, if no Default or Event of Default has occurred or is continuing or would result therefrom; provided that any prepayment, repurchase or redemption or Other Debt pursuant to this sentence may not subsequently be characterized as having been made pursuant to any other provision of this Agreement.

SECTION 7. GUARANTY

Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "**Guaranteed Obligations**").

Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its

Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "**Fair Share Contribution Amount**" with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect

to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Company's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Company for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence and during the continuance of an Event of Default notwithstanding the existence of any dispute between Company and any Beneficiary with respect to the existence and continuance of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Company and the obligations of any other guarantor (including any other Guarantor) of the obligations of Company, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Company or any of such other guarantors and whether or not Company is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect

to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or the applicable Hedge Agreement or Banking Services Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Company or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents, the Hedge Agreements or the Banking Services Agreements; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce an agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, the Hedge Agreements or Banking Services Agreements, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Hedge Agreements, Banking Services Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Hedge Agreement, such Banking Services Agreement or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or any of the Hedge Agreements or Banking Services Agreements or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Holdings or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Beneficiary in favor of Company or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Company or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Hedge Agreements or Banking Services Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Company and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations shall have been indefeasibly paid in full and the Revolving Loan Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled, each Guarantor hereby waives and agrees not to assert any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Company with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Company, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full and the Revolving Loan Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled, each Guarantor shall withhold

exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Company or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Company, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

Subordination of Other Obligations. Any Indebtedness of Company or any Guarantor now or hereafter held by any Guarantor (the"**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full and the Revolving Loan Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

Authority of Guarantors or Company. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Company or the officers, directors or any agents acting or purporting to act on behalf of any of them.

Financial Condition of Company. Any Credit Extension may be made to Company or continued from time to time, and any Hedge Agreements or Banking Services Agreements may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such grant or continuation or at the time such Hedge Agreement or Banking Services Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's

assessment, of the financial condition of Company. Each Guarantor has adequate means to obtain information from Company on a continuing basis concerning the financial condition of Company and its ability to perform its obligations under the Credit Documents the Hedge Agreements and the Banking Services Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Company and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Company now known or hereafter known by any Beneficiary.

Bankruptcy, etc. So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Company or any other Guarantor or by any defense which Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been

commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Company of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Company, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor (other than Holdings) or any of its successors in interest hereunder shall be sold or

otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

SECTION 8. EVENTS OF DEFAULT; LIQUIDITY EVENTS; CURE RIGHTS

8.1 Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Company to pay (i) when due any principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; (ii) when due any amount payable to Issuing Bank in reimbursement of any drawing under a Letter of Credit; or (iii) any interest on any Loan or any fee or any other amount due hereunder within five (5) days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of $5,000,000 or more or with an aggregate principal amount of $10,000,000 or more, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Credit Party with respect to any other term of (1) one or more items of such Indebtedness or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, or any other event or circumstance shall occur, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default or event or circumstance is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be, or to require an offer to purchase or redeem such Indebtedness be made (other than any due on sale provision with respect to any Indebtedness permitted to be repaid hereunder and which is so repaid in full); or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Sections 2.6, 2.14, 5.1(f), 5.1(g), 5.2(i), 5.14, 5.15 or 6 (and with respect to Section 6.8(a) only, subject to the expiration of the cure period provided in Section 8.3); or

(d) Breach of Representations, etc. Any representation, warranty or certification made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing

pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an officer of such Credit Party becoming aware of such default or (ii) receipt by Company of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc.. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Holdings or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Holdings or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Holdings or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Holdings or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Holdings or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc.. (i) Holdings or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Holdings or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Holdings or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Holdings or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in this Section 8.1(g) or in Section 8.1(f) above; or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $5,000,000 or (ii) in the aggregate at any time an amount in excess of $10,000,000 (in either case

to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Holdings or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days (or in any event later than five (5) days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the dissolution or split up of such Credit Party; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events or (ii) there shall exists any fact or circumstance that results or reasonably could be expected to result in the imposition of a Lien or security interest with respect to any Employee Benefit Plan under Section 412(n) of the Internal Revenue Code or under ERISA, in either case involving or that might reasonably be expected to involve in any individual case an amount in excess of $5,000,000 or in the aggregate at any time an amount in excess of $10,000,000; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations or upon the release of such Guaranty with respect to a Subsidiary of the Company in connection with an Asset Sale permitted hereby, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party;

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, upon notice to Company by Administrative Agent (which notice shall be given by Administrative Agent upon the request of the Requisite Lenders), (A) the Revolving Loan Commitments, if any, of each Lender having such Revolving Loan Commitments and the obligation of Issuing Bank to issue any Letter of Credit shall immediately terminate; (B) each of the following shall immediately

become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (I) the unpaid principal amount of and accrued interest on the Loans, (II) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit), and (III) all other Obligations; provided, the foregoing shall not affect in any way the obligations of Lenders under Section 2.2(b)(iv) or Section 2.3(e); (C) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents; and (D) Administrative Agent shall direct Company to pay (and Company hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Section 8.1(f) and (g) to pay) to Administrative Agent such additional amounts of cash, to be held as security for Company's reimbursement Obligations in respect of Letters of Credit then outstanding, equal to the Letter of Credit Usage at such time.

8.2 Liquidity Event; Sponsor's Right to Cure

Upon the occurrence of a Liquidity Event, Holdings may, within ten (10) days of the date of such occurrence, deliver a fully executed notice (a "**Liquidity Event Cure Notice**") to Administrative Agent and Collateral Agent of its intention to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of Holdings, and, in each case, to contribute any such cash to the capital of the Borrowers (collectively, the "**Liquidity Event Cure Right**"). Notwithstanding anything herein to the contrary, a Liquidity Event Cure Notice may be delivered no more than two times in any 12 month period. The Liquidity Event Cure Notice shall (i) state the date on which such cash is to be contributed to the capital of the Borrowers (which date shall be no later than (A) the 10th day subsequent to the occurrence of such Liquidity Event or (B) if such Liquidity Event occurred as direct result of the establishment of a Reserve or credit limit (pursuant to Section 2.11(a)(xix)(B)) by Collateral Agent or Administrative Agent, as applicable, for which Borrower Representative did not have at least 5 Business Days prior notice, the 15th day subsequent to the occurrence of such Liquidity Event), (ii) state the amount of such cash to be contributed to the capital of the Borrowers (the "**Liquidity Event Cure Amount**") and (iii) be irrevocable. Upon receipt of the Liquidity Event Cure Amount, Holdings shall contribute such amount to the capital of Borrowers irrespective of the amount, if any, of Excess Availability at such time. Upon receipt by Borrowers of such Liquidity Event Cure Amount pursuant to the exercise by Holdings of such Liquidity Event Cure Right, Excess Availability shall be recalculated and if, after giving effect to the foregoing recalculations the Borrower shall have Excess Availability of $6.0 million or more, then such Liquidity Event shall be deemed not to have occurred (a "**Liquidity Event Cure**") and any Account Control Event that was triggered thereby shall cease to exist; provided, however, that if after giving effect to the foregoing recalculations, the Borrower shall not have Excess Availability of $6.0 million or more, then a new Liquidity Event shall be deemed to have occurred. If Holdings delivers a Liquidity Event Cure Notice with respect to a Liquidity Event and fails to timely contribute the Liquidity Event Cure Amount specified in such Liquidity Event Notice, then such Liquidity Event shall not be cured and if Borrowers are not in compliance with

the Financial Performance Covenant, then Holdings shall not be entitled to exercise any Financial Performance Covenant Cure Right related to such failure (notwithstanding anything to the contrary in Section 8.3).

8.3 Financial Performance Covenant; Sponsors Right to Cure

Anything to the contrary contained in Section 8.1 notwithstanding, in the event that the Borrowers fail (or, but for the operation of this Section 8.3, would fail) to comply with the requirements of the covenant set forth in Section 6.8(a) (the "**Financial Performance Covenant**"), Holdings may (subject to Section 8.2), on the date that the Fixed Charge Coverage Compliance Certificate relating to such failure is delivered, deliver a fully executed notice (a "**Financial Performance Covenant Cure Notice**") to Administrative Agent and Collateral Agent of its intention to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of Holdings, and, in each case, to contribute any such cash to the capital of the Borrowers (collectively, the "**Financial Performance Covenant Cure Right**"). Notwithstanding anything herein to the contrary, a Financial Performance Covenant Cure Notice may not be delivered if as a result more than six (6) Financial Performance Covenant Cure Notices would be delivered in the twelve-month period ending on the last day of the calendar month in which the Financial Performance Covenant Cure Notice is delivered (the "**Current Twelve-Month Period**"). The Financial Performance Covenant Cure Notice shall (i) state the date on which such cash is to be contributed to the capital of the Borrowers (which date shall be no later than the 10th day subsequent to the date the certificate calculating the Fixed Charge Coverage Ratio is required to be delivered pursuant to Section 5.1(l) (ii) state the amount of such cash to be contributed to the capital of the Borrowers (the "**Financial Performance Cure Covenant Amount**") and (iii) be irrevocable. Upon receipt of the Financial Performance Covenant Cure Amount, Holdings shall contribute such amount to the capital of Borrowers. Upon receipt by Borrowers of such Financial Performance Covenant Cure Amount pursuant to the exercise by Holdings of such Financial Performance Covenant Cure Right, Consolidated Adjusted EBITDA shall be recalculated and if, after giving effect to the foregoing recalculations, the Borrowers would have been in compliance with the requirements of the Financial Performance Covenant, then the Borrowers shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of the Financial Performance Covenant that had occurred shall be deemed cured for the purposes of this Agreement. For purposes of this Section 8.3(a), the amount of the Financial Performance Covenant Cure Amount that shall count towards Consolidated Adjusted EBITDA shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant. For the avoidance of doubt, if, on any relevant date during a Liquidity Event the Borrowers are not in compliance with the Financial Performance Covenant and Holdings (i) fails to deliver a Financial Performance Covenant Cure Notice on the date that the Fixed Charge Coverage Compliance Certificate relating to such

failure is delivered or (ii) has delivered a Financial Performance Cure Notice six (6) times in the Current Twelve-Month

Period, an Event of Default shall immediately occur. The foregoing notwithstanding, if the event giving rise to the breach or default (or potential breach or default) of the Financial Performance Covenant is the occurrence of a Liquidity Event and a Liquidity Event Cure occurs with respect to such Liquidity Event, such Liquidity Event Cure shall also cure the breach or default (or potential breach or default) of the Financial Performance Cure with no further action necessary by Holdings or Borrowers.

SECTION 9. AGENTS

9.1 Appointment of Agents. Credit Suisse is hereby appointed Administrative Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Administrative Agent to act as its agent in such capacity in accordance with the terms hereof and the other Credit Documents. JPMorgan Chase Bank, N.A. is hereby appointed Collateral Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Collateral Agent to act as its agent in such capacity in accordance with the terms hereof and the other Credit Documents. JPMorgan Chase Bank, N.A. is hereby appointed Syndication Agent hereunder, and each Lender hereby authorizes Syndication Agent to act as its agent in accordance with the terms hereof and the other Credit Documents. Wachovia Capital Finance Corporation (Central) is hereby appointed Documentation Agent hereunder, and each Lender hereby authorizes Documentation Agent to act as its agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries.

9.2 Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Lender irrevocably authorizes each of the Administrative Agent and the Collateral Agent to execute and deliver the Intercreditor Agreement and agrees to be bound by the provisions therein. Each Agent may perform any and all of their duties and exercise their rights and powers by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates, and the respective directors, officers, employees, agents and advisors of such Agent and such Agent's Affiliates. The exculpatory provisions of the Credit Documents shall apply to any such sub-agent and to the Affiliates, directors, officers, employees, agents and advisors of such 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 Agent. No Agent shall have, by

reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3 General Immunity.

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

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have

any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5). Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon.

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

9.5 Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

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

9.6 Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties

hereunder or under the other Credit Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Credit Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7 Successor Administrative Agent and Swing Line Lender. Administrative Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and Borrower Representative. Upon any such notice of resignation, Requisite Lenders shall have the right, upon five (5) Business Days' notice to Borrower Representative, to appoint a successor Administrative Agent. If no successor shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within thirty (30) days after the resigning Administrative Agent gives notice of its resignation, then the resigning Administrative Agent may, on behalf of Agents, Lenders and Issuing Banks, appoint a successor Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any resignation of Administrative Agent pursuant to this Section shall also constitute the resignation of Credit Suisse or its successor as Swing Line Lender and Issuing Bank, and any successor Administrative Agent appointed pursuant to this Section shall, upon its acceptance of such appointment, become the successor Swing Line Lender and Issuing Bank for all purposes hereunder. In such event (a) Borrower Representative shall prepay any outstanding Swing Line Loans made by the retiring Administrative Agent in its capacity as Swing Line Lender, (b) upon such prepayment, the retiring Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to Borrower Representative for cancellation, and (c) Borrower Representative shall issue, if so requested by successor

Administrative Agent and Swing Line Loan Lender, a new Swing Line Note to the successor Administrative Agent and Swing Line Lender, in the principal amount of the Swing Line Loan Sublimit then in effect and with other appropriate insertions.

9.8 Collateral Documents and Guaranty.

(a) Agents under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from Lenders, Administrative Agent or Collateral Agent, as applicable may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, Company, Administrative Agent, Collateral Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale.

9.9 Overadvances

. Notwithstanding anything to the contrary in this Agreement, the Administrative Agent, Issuing Bank and Swingline Lender, as applicable, may make, on behalf of the Lenders, Revolving Loans, or issue Letters of Credit to the Borrowers, in each case, notwithstanding its knowledge that such Revolving Loans, Swingline Loans, or Letters of Credit would either (i) cause the aggregate amount of the Revolving Exposure to exceed the Borrowing Base or (ii) be made or issued when one or more of the other conditions precedent to the making of Loans hereunder cannot be satisfied (each an "**Overadvance**" and collectively, the "**Overadvances**"), if the Administrative Agent deems it necessary or advisable in its discretion to do so, provided,

that: the total principal amount of the Overadvances shall not exceed an amount equal to $3.0 million outstanding at any time and shall not cause the Revolving Exposure to exceed the Revolving Loan Commitments of all of the Lenders or the Revolving Exposure of a Lender to exceed such Lender's Revolving Loan Commitment. Borrowers agree that all Overadvances will be repayable on demand by the Administrative Agent, and will in any event be repaid within sixty (60) days. Overadvances shall accrue interest at the rate provided for in Section 2.7(d). Each Lender shall be obligated to pay Administrative Agent the amount of its Pro Rata Share of any such Overadvance provided, that such Administrative Agent is acting in accordance with the terms of this Section 9.9.]

SECTION 10. MISCELLANEOUS

10.1 Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Credit Party, Collateral Agent, Administrative Agent, Swing Line Lender, Issuing Bank, Syndication Agent or Documentation Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States certified or registered mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent. As agreed to among Holdings, the Borrower, the Administrative Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower hereby agrees, unless directed otherwise by the Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to the Borrower, that it will, or will cause its Subsidiaries to, provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Credit Documents or to the Lenders under Article 5, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date thereof, (ii) provides notice of any Default or Event of Default under this Agreement or any other Credit Document or (iii) is or relates to a Funding Notice, a Conversion/Continuation Notice, an Issuance Notice or a notice requesting the issuance, amendment, extension or renewal of a Letter of Credit pursuant to Section 2.3, or is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "***Communications***"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format acceptable to the Administrative Agent to an electronic mail address as directed by the Administrative Agent. In addition, the Borrower agrees, and agrees to cause its Subsidiaries, to

continue to provide the Communications to the Administrative Agent or the Lenders, as the case may be, in the manner specified in the Credit Documents but only to the extent requested by the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the Issuing Bank materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the "***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 (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 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 confidential information, they shall be treated as set forth in Section 10.17); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor;" and (z) the Administrative Agent 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 marked as "Public Investor." Notwithstanding the foregoing, the following Borrower Materials shall be marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Credit Documents and (2) notification of changes in the terms of the Credit Documents.

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Communications that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE

ANY LIABILITY TO ANY CREDIT PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY CREDIT PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Credit Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

10.2 Expenses. Whether or not the transactions contemplated hereby shall be consummated, Borrower Representative agrees to pay promptly (a) all the actual costs and expenses incurred by Arranger and Administrative Agent and Collateral Agent in connection with the preparation of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrower Representative and the other Credit Parties; (c) the reasonable fees, expenses and disbursements of counsel to Arranger and Administrative Agent and Collateral Agent in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower Representative; (d) all the actual costs and expenses of creating and perfecting Liens in favor of Collateral Agent, for the benefit of Lenders and Issuing Bank pursuant hereto,

including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and Arranger and of counsel providing any opinions that Arranger, any Agent or Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the actual and reasonable out-of-pocket costs and fees, expenses and disbursements of any auditors, accountants, consultants or appraisers retained by Administrative Agent or Collateral Agent in connection with the Credit Documents and identified to Borrower Representative prior to their retention; (f) all the actual costs and expenses (including the fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable out-of-pocket costs and expenses incurred by Arranger and each Agent in connection with the syndication of the Loans and Commitments and the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto and the transactions

contemplated thereby; and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by Arranger, each and any Agent or each and any Lender and Issuing Bank in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings.

10.3 Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, Arranger, each Agent, each Lender and Issuing Bank and the officers, partners, directors, trustees, employees, agents (including advisors) and Affiliates of Arranger, each Agent, each Lender and Issuing Bank (each, an "**Indemnitee**"), from and against any and all Indemnified Liabilities; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction. As used herein, "**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, actions, judgments, suits, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of this Agreement or the other Credit Documents the Related Agreements or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)).

(b) To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum

portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(c) To the extent permitted by applicable law, each of Holdings and Company, and its Subsidiaries, shall not assert, and each of Holdings and Company, and its Subsidiaries, hereby waives, any claim against Lenders, Issuing Bank, Agents and Arranger, and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or referred to herein, the transactions contemplated hereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each of Holdings and Company, and its Subsidiaries, hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default each Agent, each Lender and each of their respective Affiliates is hereby authorized by each Credit Party at any time or from time to time, without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Agent, Lender or Affiliate to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Agent, Lender or Affiliate hereunder, the Letters of Credit and participations therein and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, the Letters of Credit and participations therein or with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured.

10.5 Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to Section 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Requisite Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) extend the stated expiration date of any Letter of Credit beyond the Revolving Loan Commitment Termination Date;

(iv) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10) or any fee payable hereunder;

(v) extend the time for payment of any such interest or fees;

(vi) reduce or forgive the principal amount of any Loan or any reimbursement obligation in respect of any Letter of Credit;

(vii) amend, modify, terminate or waive any provision of this Section 10.5(b), Section 10.5(c) or Section 2.16 hereof, or Section 7.2 of the Pledge and Security Agreement;

(viii) amend the definition of "**Requisite Lenders**" or "**Pro Rata Share**";

(ix) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents; or

(x) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall:

(i) increase any Revolving Loan Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Revolving Loan Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to the Swing Line Sublimit or the Swing Line Loans without the consent of Swing Line Lender;

(iii) amend, modify, terminate or waive any obligation of Lenders with Revolving Loan Commitments relating to the purchase of participations in Letters of Credit as provided in Section 2.4(e) without the written consent of Administrative Agent and of Issuing Bank;

(iv) amend the definition of "Borrowing Base" or any definition used therein, or Section 2.11 hereof, without the written concurrence of Lenders having or holding Revolving Exposure and representing more than 66-2/3rds percent of the sum of the aggregate Revolving Exposure of all Lenders; provided, that, the foregoing shall not (A) limit the discretion of the Administrative Agent or Collateral Agent to change, establish or eliminate any Reserves without the consent of any Lenders or (B) affect any other matter that this Agreement leaves to the discretion of the Administrative Agent and/or the Collateral Agent; or

(v) amend, modify, terminate or waive any provision of Section 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the written concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

10.6 Successors and Assigns; Participations.

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

(b) Register. Borrower Representative, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 10.6(f). Prior to such recordation, all amounts owed with respect to the applicable Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Commitment or Loans owing to it or other Obligation (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (i) of the definition of the term of "Eligible Assignee" (a "**Related Lender Assignment**") upon the giving of notice to Borrower Representative and Administrative Agent and, for any assignment of a Revolving Loan Commitment, the consent of Administrative Agent and Issuing Bank (such consent not to be unreasonably withheld or delayed); and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term of "Eligible Assignee" (other than a Person described in the foregoing subclause (i)) and (except in the case of assignments made by or to JPMorgan Chase or Credit Suisse) consented to by each of Borrower Representative and Administrative Agent and,

for any assignment of Revolving Loan Commitment, Issuing Bank (each such (x) consent not to be unreasonably withheld or delayed or, (y) in the case of Borrower Representative, shall be deemed to have been provided to any such assignment unless the Borrower Representative shall have objected thereto by written notice to the Administrative Agent within fifteen (15) days after having received notice of such assignment, or (z) in the case of Borrower Representative, not to be required at any time during syndication of the Loans to persons identified by the Administrative Agent to the Borrower Representative on or prior to the Closing Date or at any time an Event of Default under Sections 8.1(a), 8.1(f) or 8.1(g) shall have occurred and then be continuing; provided, further each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount as may be agreed to by Borrower Representative and Administrative Agent or as shall constitute the aggregate amount of the Revolving Loan Commitments and Revolving Loans of the assigning Lender) with respect to the assignment of the Revolving Loan Commitments and Revolving Loans.

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent (i) an Assignment Agreement (A) via an electronic settlement system acceptable to Administrative Agent (which initially shall be ClearPar, LLC), or (B) manually together with a processing and recordation fee of $3,500, and (ii) such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to Section 2.19(c); provided, however, that should a Lender or assignee party to a Related Lender Assignment deliver an Assignment Agreement to the Administrative Agent for recording, such Lender or assignee shall provide the relevant administration details and applicable tax forms with such Assignment Agreement.

(e) RESERVED.

(f) Notice of Assignment. Upon its receipt of a duly executed and completed Assignment Agreement, together with the processing and recordation fee referred to in Section 10.6(d) (and any forms, certificates or other evidence required by this Agreement in connection therewith), Administrative Agent shall record the information contained in such Assignment Agreement in the Register and shall maintain a copy of such Assignment Agreement.

(g) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the

applicable Commitments or Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(h) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the "Effective Date" specified in the applicable Assignment Agreement: (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, (y) Issuing Bank shall continue to have all rights and obligations thereof with respect to such Letters of Credit until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder and (z) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect the Commitment of such assignee and any Revolving Loan Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation or deliver a lost note affidavit, and thereupon Borrowers shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Loan Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(i) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than to a natural person, Holdings, any of its Subsidiaries or any of its Affiliates) in all or any part of its Commitments, Loans or in any other Obligation. The holder of any such participation shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond the Revolving Loan Commitment Termination Date) in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the

Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating. Borrower Representative agrees that each participant shall be entitled to the benefits of Sections 2.17(c), 2.18 and 2.19 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (i) a participant shall not be entitled to receive any greater payment under Section 2.18 or 2.19 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 Borrower Representative's prior written consent and (ii) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.19 unless Borrower Representative is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower Representative, to comply with Section 2.19 as though it were a Lender. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.16 as though it were a Lender.

(j) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, (i) any Lender may assign and/or pledge all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Company and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

10.7 Independence of Covenants. All covenants hereunder 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 would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.18(c), 2.19, 2.20, 10.2, 10.3 and 10.4 and the agreements of Lenders set forth in Sections 2.17, 9.3(b) and 9.6 shall survive the payment of the Loans, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, and the termination hereof.

10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of Arranger, any Agent, any Lender or Issuing Bank in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Arranger, each Agent, each Lender and Issuing Bank hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Hedge Agreements or Banking Services Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10 Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent, Collateral Agent or Lenders (or to Administrative Agent or Collateral Agent, on behalf of Lenders), or Administrative Agent, Collateral Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability. In case any provision in or obligation hereunder or any Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12 Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

10.13 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

10.15 CONSENT TO JURISDICTION. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY CREDIT PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (b) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (d) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (c) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (e) AGREES AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

10.16 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/COMPANY RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL

INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, WHICH EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17 Confidentiality. Each Lender shall hold all non-public information regarding Holdings and its Subsidiaries and their businesses identified as such by Borrower Representative and obtained by such Lender pursuant to the requirements hereof in accordance with such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Holdings that, in any event, a Lender may make disclosures: (i) to Affiliates of such Lender and to their agents and advisors (and to other persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17); (ii) reasonably required by any bona fide or potential pledgee, assignee, transferee or participant in connection with the contemplated pledge, assignment, transfer or participation by such Lender of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) in Hedge Agreements or Banking or Services Agreements (provided, such counterparties and advisors are advised of and agree to be bound by the provisions of this Section 10.17); (iii) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Credit Parties received by it from any of the Agents or any Lender; and (iv) required or requested by any governmental agency or representative thereof or by The National Association of Insurance Commissioners (and any successor thereto) or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Borrower Representative of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information; provided, further, that in no event shall any Lender be obligated or required to return any materials furnished by Holdings, Company or any of its Subsidiaries. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitations of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax

analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates.

10.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower Representative shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Company to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower Representative.

10.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

10.20 Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each Credit Party, the Administrative Agent, the Collateral Agent, the Swing Line Lender, the Issuing Bank and the Lenders.

APPENDIX A-1
TO CREDIT AND GUARANTY AGREEMENT

Revolving Loan Commitments

Lender	Revolving Loan Commitment		Pro Rata Share
Credit Suisse AG, Cayman Islands Branch	$	5,000,000	8-1/3rd %
JPMorgan Chase Bank, N.A.	$	30,000,000	50.0 %
Wachovia Capital Finance Corporation (Central)	$	25,000,000	41-2/3rds %
Total	**$**	**60,000,000**	**100.000000000 %**

APPENDIX B
TO CREDIT AND GUARANTY AGREEMENT

Notice Addresses

DOUGLAS DYNAMICS, INC.
DOUGLAS DYNAMICS FINANCE COMPANY
DOUGLAS DYNAMICS, L.L.C.
FISHER, LLC

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

CREDIT SUISSE AG,
acting through its Cayman Islands Branch,
as Administrative Agent,
Swing Line Lender, Issuing Bank and a Lender

Administrative Agent's Principal Office:

Eleven Madison Avenue, OMA-2
New York, NY 10010
Attention: Loan Services Manager
Tel: 212-538-3380
Fax: 212-325-8304

Swing Line Lender's Principal Office:

Eleven Madison Avenue, OMA-2
New York, NY 10010
Attention: Loan Services Manager
Tel: 212-538-3380
Fax: 212-325-8304

Issuing Bank's Principal Office:

Eleven Madison Avenue, OMA-2
New York, NY 10010
Attention: Letter of Credit Manager
Tel: 212-325-9286
Fax: 212-538-5626

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

Michael A. Hintz
Account Executive — ABL
111 East Wisconsin Ave., Floor 15
Milwaukee, WI 53202-4815
Telecopy: 414-977-6652
Telephone: 414-977-6666

in each case, with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Suite 2100
Chicago, IL 60606
Attn: Seth E. Jacobson
Tel: 312-407-0700
Fax: 312-407-0411

Exhibit B

<u>Amendment to Term Credit Agreement</u>

See Exhibit 10.1 to Amendment No.5 to the Registration Statement on Form S-1 of Douglas Dynamics, Inc. (File No. 333-164590).

Exhibit C

<u>Intercreditor Amendment</u>

<u>See attached.</u>

AMENDMENT NO. 1 TO INTERCREDITOR AGREEMENT

This AMENDMENT NO. 1 TO INTERCREDITOR AGREEMENT (this "Amendment"), dated as of April [ ], 2010, is made and entered into among Douglas Dynamics, L.L.C., a Delaware limited liability company (the "Borrower"), Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance"), Fisher, LLC, as Delaware limited liability company ("Fisher"), Douglas Dynamics, Inc., a Delaware corporation ("Holdings"), Credit Suisse AG, Cayman Islands Branch ("Credit Suisse"), in its capacity as administrative agent under the ABL Loan Documents (as defined in the Intercreditor Agreement referred to below) (in such capacity, the "ABL Administrative Agent"), JPMorgan Chase Bank, N.A, in its capacity as collateral agent under the ABL Loan Documents (in such capacity, the "ABL Collateral Agent"), Credit Suisse, in its capacities as administrative agent (in such capacity, the "Term Administrative Agent" and, together with the ABL Administrative Agent, the "Administrative Agents") and collateral agent (in such capacity, the "Term Collateral Agent") under the Term Loan Documents (as defined in the Intercreditor Agreement referred to below).

RECITALS

A. The Borrower, DD Finance, Fisher, Holdings, the ABL Administrative Agent, the ABL Collateral Agent, the Term Administrative Agent and the Term Collateral Agent entered into that certain Intercreditor Agreement dated as of May 21, 2007 (the "Intercreditor Agreement"; capitalized terms used but not defined herein having the meanings set forth therein).

B. Concurrently herewith, the Term Credit Agreement and the ABL Credit Agreement have been amended to permit the making of additional term loans under the Term Credit Agreement in the principal amount of $40,000,000 and reflect certain other changes.

C. The ABL Required Lenders and the Term Required Lenders have given their prior written consent to the execution of this Amendment.

D. The Borrower, the Term Administrative Agent, the Term Collateral Agent, the ABL Administrative Agent and the ABL Collateral Agent desire to amend the Intercreditor Agreement as set forth below on and subject to the terms of this Amendment.

AGREEMENT

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

1. Amendment to Intercreditor Agreement.

(a) The definition of "Maximum Term Principal Amount" in Section 1.1 of the Intercreditor Agreement is hereby amendedin its entirety by deleting the existing definition and replacing it with the following:

"Maximum Term Principal Amount" shall mean, at any time, (i) $125,000,000, less (ii) the aggregate principal amount of permanent repayments or prepayments of indebtedness under the Term Credit Agreement, other than any such reduction, repayment or prepayment made in

connection with a Refinancing, plus (iii) for the avoidance of doubt and without duplication, the aggregate principal amount of any interest that has been capitalized under the Term Credit Agreement..

(b) The definition of "Maximum ABL Principal Amount" in Section 1.1 of the Intercreditor Agreement is hereby amended in its entirety by deleting the existing definition and replacing it with the following:

"Maximum ABL Principal Amount" shall mean, at any time, (i) $60,000,000, less (ii) the aggregate permanent reductions in the ABL Loan Commitments other than any such reduction, repayment or prepayment made in connection with a Refinancing, plus (iii) for the avoidance of doubt and without duplication, the aggregate principal amount of any interest that has been capitalized under the ABL Credit Agreement.

2. Effectiveness of Amendment.. This Amendment shall be effective as of the first date (the "Amendment Effective Date") on which all of the following conditions precedent have been satisfied:

(c) The Administrative Agents shall have received counterparts of this Amendment executed by the Term Administrative Agent, the Term Collateral Agent, the ABL Administrative Agent, the ABL Collateral Agent, the Borrower, DD Finance, Fisher and Holdings.

(d) The Administrative Agents shall have received an executed copy of Amendment No. 2 to Credit and Guaranty Agreement, dated as of the date hereof (the "Term Amendment"), among the Borrower and each of the lenders party thereto and the Term Amendment shall be in full force and effect.

(e) The Administrative Agents shall have received an executed copy of Amendment No. 1 to Credit and Guaranty Agreement, dated as of the date hereof (the "ABL Amendment"), among the Borrower and each of the lenders party thereto and the ABL Amendment shall be in full force and effect.

3. Miscellaneous. **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).** This Amendment may be executed in one or more duplicate counterparts and when signed by all of the parties listed below shall constitute a single binding agreement. Except for the amendments set forth in Section 1 hereof, all of the provisions of the Intercreditor Agreement shall remain in full force and effect. The foregoing amendments shall be strictly construed in accordance with the express terms thereof. This Amendment shall be deemed a "Credit Document" as defined in the Credit Agreement.

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

CREDIT PARTIES:

DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title:

DOUGLAS DYNAMICS, INC.

By: ____________________________
Name:
Title:

DOUGLAS DYNAMICS FINANCE COMPANY

By: ____________________________
Name:
Title:

FISHER, LLC,

By: ____________________________
Name:
Title:

ABL ADMINISTRATIVE AGENT:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as ABL Administrative Agent

By: ____________________________
Name: ____________________________
Title: ____________________________

By: ____________________________
Name: ____________________________
Title: ____________________________

ABL COLLATERAL AGENT:

JPMORGAN CHASE, N.A.,
as ABL Collateral Agent

By: ____________________________
Name: ____________________________
Title: ____________________________

TERM ADMINISTRATIVE AGENT AND TERM COLLATERAL AGENT:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Term Administrative Agent and Term Collateral Agent

By: ____________________________
Name: ____________________________
Title: ____________________________

By: ____________________________
Name: ____________________________
Title: ____________________________

Exhibit 10.4

EXHIBIT A-1

FUNDING NOTICE

Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower Representative"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Pursuant to Section[s] [2.1(b)] [and] [2.2(b)] of the Credit Agreement, Borrower Representative desires that Lenders make the following Credit Extension[s] to Company in accordance with the applicable terms and conditions of the Credit Agreement on [mm/dd/yyyy] (the "Credit Date"):

1. Revolving Loans

☐ Base Rate Loans: $[, ,]

☐ Eurodollar Rate Loans, with an Initial Interest Period of Month(s): $[, ,]

3. Swing Line Loans: $[, ,]

Borrower Representative (for itself and on behalf of the other Borrowers) hereby certifies that:

(i) the Credit Extension[s] requested herein [comply] [complies] with the provisions of Section[s] [2.1] [and] [2.2]; and

(ii) the conditions specified in Section 3.2 have been satisfied on and as of the Credit Date.

Date: [mm/dd/yyyy]

DOUGLAS DYNAMICS, L.L.C.

By: ____________________
Name:
Title:

EXHIBIT A-2

CONVERSION/CONTINUATION NOTICE

Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower Representative"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Pursuant to Section 2.8 of the Credit Agreement, Borrower Representative (for itself and on behalf of the other Borrowers) desires to convert or to continue the following Revolving Loans, each such conversion and/or continuation to be effective as of [mm/dd/yyyy]:

$[, ,] Eurodollar Rate Loans to be continued with Interest Period of month(s)

$[, ,] Base Rate Loans to be converted to Eurodollar Rate Loans with Interest Period of month(s)

$[, ,] Eurodollar Rate Loans to be converted to Base Rate Loans

Except in the case of a conversion to Base Rate Loans, Borrower Representative (for itself and on behalf of the other Borrowers) hereby certifies that as of the date hereof, no event has occurred and is continuing or would result from the consummation of the conversion and/or continuation contemplated hereby that would constitute an Event of Default or a Default.

Date: [mm/dd/yyyy]

DOUGLAS DYNAMICS, L.L.C.

By: ____________________
Name:
Title:

EXHIBIT A-3

ISSUANCE NOTICE

Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"'), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower Representative"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Pursuant to Section 2.3(b) of the Credit Agreement, Borrower Representative (for itself and on behalf of the other Borrowers) desires a Letter of Credit to be issued in accordance with the terms and conditions of the Credit Agreement on [mm/dd/yyyy] (the "Credit Date") in an aggregate face amount of $[, ,].

Attached hereto for each such Letter of Credit are the following:

(i) the stated amount of such Letter of Credit;

(ii) the name and address of the beneficiary;

(iii) the expiration date; and

(iv) either (a) the verbatim text of such proposed Letter of Credit, or (b) a description of the proposed terms and conditions of such Letter of Credit, including a precise description of any documents to be presented by the beneficiary which, if presented by the beneficiary prior to the expiration date of such Letter of Credit, would require the Issuing Bank to make payment under such Letter of Credit.

Borrower Representative (for itself and on behalf of the other Borrowers) hereby certifies that:

(i) the Credit Extension requested herein complies with the provisions of Section 2.3; and

(ii) the conditions specified in Section 3.2 have been satisfied on and as of the Credit Date.

Date: [mm/dd/yyyy]

DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title:

EXHIBIT B-l

REVOLVING LOAN NOTE

$[Lender's Revolving Loan Commitment]
[ ], 2007

New York, New York

FOR VALUE RECEIVED, the undersigned (individually a "Borrower" and collectively, the "Borrowers"), promises to pay [NAME OF LENDER] ("Payee") or its registered assigns, on or before the Revolving Loan Commitment Termination Date, the lesser of (a) [AMOUNT] DOLLARS ($[, ,]) and (b) the unpaid principal amount of all advances made by Payee to the Borrowers as Revolving Loans under the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation, Douglas Dynamics, L.L.C., a Delaware limited liability company, Fisher, LLC, a Delaware limited liability company, Douglas Dynamics Finance Company, a Delaware corporation, the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent").

This Revolving Loan Note (this "Note") is one of the "Revolving Loan Notes" issued pursuant to and entitled to the benefits of the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Revolving Loans evidenced hereby were made and are to be repaid.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of Administrative Agent or at such other place as shall be designated in writing for such purpose in accordance with the terms of the Credit Agreement. Unless and until an Assignment Agreement effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by Administrative Agent and recorded in the Register, the Borrowers, each Agent and Lenders shall be entitled to deem and treat Payee as the owner and holder of this Note and the obligations evidenced hereby. Payee hereby agrees, by its acceptance hereof, that before disposing of this Note or any part hereof it will make a notation hereon of all principal payments previously made hereunder and of the date to which interest hereon has been paid; provided that the failure to make a notation of any payment made on this Note shall not limit or otherwise affect the obligations of the Borrowers hereunder with respect to payments of principal of or interest on this Note.

This Note is subject to mandatory prepayment and to prepayment at the option of the Borrowers, each as provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWERS AND PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision of or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. Whenever in this Note reference is made to Administrative Agent,

Payee or the Borrowers, such reference shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Note shall be binding upon the Borrowers and their successors and assigns, and shall inure to the benefit of Payee and its successors and assigns.

Upon the occurrence of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of the Borrowers, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

The Borrowers promise to pay all costs and expenses, including reasonable attorneys' fees, all as provided in the Credit Agreement, incurred in the collection and enforcement of this Note. The Borrowers and any endorsers of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

[Signature page follows]

IN WITNESS WHEREOF, the Borrowers have caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

BORROWERS:

DOUGLAS DYNAMICS, L.L.C.

By: ________________________
Name:
Title:

DOUGLAS DYNAMICS FINANCE COMPANY

By: ________________________
Name:
Title:

FISHER, LLC

By: ________________________
Name:
Title:

TRANSACTIONS ON
REVOLVING LOAN NOTE

Date	Amount of Loan Made This Date	Amount of Principal Paid This Date	Outstanding Principal Balance This Date	Notation Made By

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EXHIBIT B-2

SWING LINE NOTE

$[Lender's Commitment]
[ ], 2007 New York, New York

FOR VALUE RECEIVED, the undersigned (individually a "Borrower" and collectively, the "Borrowers"), promises to pay to [NAME OF LENDER] as Swing Line Lender ("Payee"), on or before the Revolving Loan Commitment Termination Date, the lesser of (a) [AMOUNT] DOLLARS ($[, ,]) and (b) the unpaid principal amount of all advances made by Payee to the Borrowers as Swing Line Loans under the Credit and Guaranty Agreement, dated as of May 21,2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive

renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation, Douglas Dynamics, L.L.C., a Delaware limited liability company, Fisher, LLC, a Delaware limited liability company, Douglas Dynamics Finance Company, a Delaware corporation, the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent").

This Swing Line Note (this "Note") is the "Swing Line Note" and is issued pursuant to and entitled to the benefits of the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Swing Line Loans evidenced hereby were made and are to be repaid.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of Swing Line Lender or at such other place as shall be designated in writing for such purpose in accordance with the terms of the Credit Agreement.

This Note is subject to mandatory prepayment and to prepayment at the option of the Borrowers, each as provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWERS AND PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

Upon the occurrence of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of the Borrowers, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

The Borrowers promise to pay all costs and expenses, including reasonable attorneys' fees, all as provided in the Credit Agreement, incurred in the collection and enforcement of this Note. The Borrowers and any endorsers of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

[Signature page follows]

IN WITNESS WHEREOF, the Borrowers have caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

DOUGLAS DYNAMICS, L.L.C.

By: ________________________
Name:
Title:

DOUGLAS DYNAMICS FINANCE COMPANY

By: ________________________
Name:
Title:

FISHER, LLC

By: ________________________
Name:
Title:

TRANSACTIONS ON
SWING LINE NOTE

Date	Amount of Loan Made This Date	Amount of Principal Paid This Date	Outstanding Principal Balance This Date	Notation Made By

EXHIBIT C

COMPLIANCE CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am the Chief Financial Officer of Douglas Dynamics, L.L.C. (the "Company" or the "Borrower Representative").

2. I have reviewed the terms of that certain Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), the Company, Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent"), and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Holdings and its Subsidiaries during the accounting period covered by the attached financial statements.

3. The examination described in paragraph 2 above did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes an Event of Default or Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth in a separate attachment, if any, to this Certificate, describing in detail, the nature of the condition or event, the period during which it has existed and the action which the Company or any of its Subsidiaries has taken, is taking, or proposes to take with respect to each such condition or event.

The foregoing certifications, together with the computations set forth in the Annex A hereto and made a part hereof and the financial statements delivered with this Certificate in support hereof, are made and delivered [mm/dd/yyyy] pursuant to Section 5.1(d) or 5.1(i) of the Credit Agreement or in connection with the making of a Permitted Acquisition under the Credit Agreement.

DOUGLAS DYNAMICS, L.L.C.

By: ________________________
Name:
Title:

ANNEX A TO
COMPLIANCE CERTIFICATE

FOR THE FISCAL [QUARTER] [YEAR] ENDING [mm/dd/yyyy]

This Annex A is attached to and made part of a Compliance Certificate dated as of [mm/dd/yyyy] and pertains to the period [mm/dd/yyyy] to [mm/dd/yyyy]. Subsection references herein relate to subsections of the Credit Agreement.

1. Consolidated Adjusted EBITDA:		(i) + (ii)(1) - (iii)(2) =	$	[, ,]
(i)	Consolidated Net Income:		$	[, ,]
(ii)	(a)	Consolidated Interest Expense and non-Cash interest expense:	$	[, ,]
	(b)	provisions for taxes based on income:	$	[, ,]
	(c)	total depreciation expense:	$	[, ,]
	(d)	total amortization expense: (3)	$	[, ,]
	(e)	non-cash impairment charges:	$	[, ,]
	(f)	non-cash expenses resulting from the grant of stock and stock options and other compensation to management personnel of the Company and its Subsidiaries pursuant to a written incentive plan or agreement:	$	[, ,]
	(g)	other non-Cash items that are unusual or otherwise non-recurring items:	$	[, ,]
	(h)	expenses for fees under the Management Services Agreement:	$	[, ,]
	(i)	any extraordinary losses and non-recurring charges during any period:(4)	$	[, ,]
	(j)	restructuring charges or reserves:(5)	$	[, ,]
	(k)	any transaction costs incurred in connection with the issuance of Securities or any refinancing transaction, in each case whether or not such transaction is consummated:	$	[, ,]

(1) Without duplication to the extent deducted in the calculation of Consolidated Net Income for such period.

(2) Without duplication.

(3) Including amortization of goodwill, other intangibles, and financing fees and expenses.

(4) Including severance, relocations costs, one-time compensation charges and losses or charges associated with Interest Rate Agreements.

(5) Including costs related to closure of Facilities.

	(l)	any fees and expenses related to any Permitted Acquisitions	$	[, ,]
(iii)	(a)	non-Cash items increasing Consolidated Net Income for such period that are unusual or otherwise non-recurring items:	$	[, ,]
	(b)	cash payments made during such period reducing reserves or liabilities for accruals made in prior periods but only to the extent such reserves or accruals were added back to "Consolidated Adjusted EBITDA" in a prior period pursuant to clauses (ii)(f) or (ii)(g) above:	$	[, ,]
	(c)	Restricted Payments made during such period to Holdings pursuant to Section 6.5(c)(i):	$	[, ,]

2. Consolidated Capital Expenditures:	$	[, ,]
The aggregate of all expenditures of the Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of the Company and its Subsidiaries. (6)		
Maximum: (7)	$	[, ,]
3. Consolidated Fixed Charges: (i) + (ii) + (iii) + (iv) + (v) = (8)	$	[, ,]

(i)	Consolidated Interest Expense:	$	[, ,]
(ii)	scheduled payments of principal on Consolidated Total Debt:	$	[, ,]
(iii)	Consolidated Capital Expenditures: (9)	$	[, ,]
(iv)	the portion of taxes based on income actually paid in cash during such period by the Company or any of its Subsidiaries whether for such period or any other period:	$	[, ,]
(v)	Restricted Payments permitted under Section 6.5(c)(iii) of the Credit Agreement and which are paid in cash during such period:	$	[, ,]

6. Consolidated Interest Expense: (i) - (ii) =	$	[, ,]

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(6) Excluding expenditures constituting the purchase price for Permitted Acquisitions and amounts constituting Net Asset Sale Proceeds and Net Insurance/Condemnation Proceeds which are reinvested in the business of Company and its Subsidiaries in accordance with Section 2.13(a) or Section 2.13(b) of the Credit Agreement, respectively, by the Company and its Subsidiaries during such period.

(7) Maximum for calendar year.

(8) Without duplication.

(9) Other than those financed with secured Indebtedness permitted by Sections 6.1 and 6.2 of the Credit Agreement.

(i) total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) payable in cash of the Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Company and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements: (10)	$	[, ,]
(ii) the aggregate amount of interest income of the Company and its Subsidiaries during such period paid in cash:	$	[, ,]
7. Consolidated Net Income: (i) - (ii) =	$	[, ,]

(i)		the net income (or loss) of the Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP:	$	[, ,]
(ii)	(a)	the income (or loss) of any Person (other than a Subsidiary of the Company) in which any other Person (other than the Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Company or any of its Subsidiaries by such Person during such period:	$	[, ,]
	(b)	the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Company or is merged into or consolidated with the Company or any of its Subsidiaries or that Person's assets are acquired by the Company or any of its Subsidiaries:	$	[, ,]
(c)		the income of any Subsidiary of the Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary:	$	[, ,]
	(d)	any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan:	$	[, ,]

(e)	to the extent not included in items (a) through (d) above, any net extraordinary gains or net extraordinary losses:	$	[, ,]
8. Consolidated Total Debt:		$	[, ,]
	The aggregate stated balance sheet amount of all Indebtedness of the Company and its Subsidiaries determined on a consolidated basis		

(10) Excluding any amounts referred to in Section 2.10(d) of the Credit Agreement payable on or before the Closing Date and amounts with respect to the termination of Interest Rate Agreements entered into within 90 days of the Closing Date.

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	in accordance with GAAP; provided, that the amount of revolving Indebtedness to be included at the date of determination shall be equal to the average of the balances of such revolving Indebtedness as of the end of each of the prior four calendar quarters: (11)		$	[, ,]
9. Fixed Charge Coverage Ratio: (12) (i)/(ii) =				
(i)	Consolidated Adjusted EBITDA for the 12 months then ended:		$	[, ,]
(ii)	Consolidated Fixed Charges for such 12 month period:		$	[, ,]
		Actual:	. :1.00	
		Required:(13)	1.00:1.00	
10. Leverage Ratio: (14), (15) (i)/(ii) =				
(i)	Consolidated Total Debt less unrestricted Cash and Cash Equivalents of the Company and its Subsidiaries as of such day in excess of $1,000,000:		$	[, ,]
(ii)	Consolidated Adjusted EBITDA for the four-Fiscal Quarter period then ended:		$	[, ,]
		Actual:	. :1.00	
		Required:	. :1.00	

(11) Except that with respect to the first four calendar quarters after the Closing Date, the amount of revolving Indebtedness to be included shall be based on the average of the quarter end balances from the Closing Date through the date of determination.

(12) Calculated as of the last day of any month.

(13) If a Liquidity Event then exists.

(14) Calculated as of the last day of any 12 month period.

(15) For purposes of determining the unsecured debt basket pursuant to Section 6.1(k).

EXHIBIT D

OPINION OF COUNSEL FOR CREDIT PARTIES

EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Assignment") is dated as of the Effective Date set forth below and is entered into by and between [NAME OF ASSIGNOR] (the "Assignor"') and [NAME OF ASSIGNEE] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below, the interest in and to all of the Assignor's rights and obligations under the Credit Agreement and any other documents or instruments delivered pursuant thereto that represents the amount and percentage interest identified below of all of the Assignor's outstanding rights and obligations under the respective facilities identified below (including to the extent included in any such Loans and Letters of Credit) (the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and the Credit Agreement, without representation or warranty by the Assignor.

1. Assignor:

2. Assignee: [and is an Affiliate/Related Fund/Sponsor/Fund affiliated with Sponsor(1)]

3. Borrower(s): Douglas Dynamics, L.L.C.

4. Administrative Agent: Credit Suisse, acting through its Cayman Islands Branch, as the administrative agent under the Credit Agreement

5. Credit Agreement: The Credit and Guaranty Agreement, dated as of May 21, 2007, by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C, a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower Representative"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ('Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent")

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(1) Select as applicable.

6. Assigned Revolving Loan Commitment:

Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans(2)
$	$	%
$	$	%
$	$	%

Effective Date: , 20 *[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]*

7. Notice and Wire Instructions:

[NAME OF ASSIGNOR]

Notices:

Attention:
Telecopier:

with a copy to:

Attention:
Telecopier:

Wire Instructions:

[NAME OF ASSIGNEE]

Notices:

Attention:
Telecopier:

with a copy to:

Attention:
Telecopier:

Wire Instructions:

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(2) Set forth, to at least 9 decimal places, as a percentage of the Commitment/Loans of all Lenders thereunder.

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR:
[NAME OF ASSIGNOR]

By: ________________________
Name:
Title:

ASSIGNEE:
[NAME OF ASSIGNEE]

By: ________________________
Name:
Title:

[Consented to and](3) Accepted:

CREDIT SUISSE,
acting through its Cayman Islands Branch,
as Administrative Agent

By: ______________________________
Name:
Title:

By: ______________________________
Name:
Title:

[Consented to by Borrower Representative:](4)

DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title:

---

(3) If required pursuant to Section 10.6(c) of the Credit Agreement.

(4) If required pursuant to Section 10.6(c) of the Credit Agreement.

ANNEX 1

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION AGREEMENT

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with any Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or any other instrument or document delivered pursuant thereto, other than this Assignment (herein collectively the "Credit Documents"), or any collateral thereunder, (iii) the financial condition of Holdings, the Company, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by Holdings, the Company, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision, and (v) if it is a Non-US Lender, attached to the Assignment is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at that time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to or on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. Post-Default. After the occurrence and during the continuation of an Event of Default, the Company may identify, by written to notice to the Administrative Agent (and the Administrative Agent shall promptly notify the Lenders), up to two banks, financial institutions or other entities who shall not be permitted to be an Eligible Assignee during the continuation of such Event of Default.

4. General Provisions. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed

counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of laws principles thereof.

EXHIBIT F

CERTIFICATE RE: NON-BANK STATUS

Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower Representative"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Pursuant to Section 2.19(c) of the Credit Agreement, the undersigned hereby certifies that it is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code of 1986, as amended. Attached hereto are two original copies of Internal Revenue Service Form W-8 (or its successor form) properly completed and duly executed.

[NAME OF LENDER]

By: ______________________________
Name:
Title:

EXHIBIT G

SOLVENCY CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am the Chief Financial Officer of Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings") and Douglas Dynamics, L.L.C., a Delaware limited liability company (the "Company" or the "Borrower Representative").

2. Reference is made to the Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Holdings, the Company, Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent").

3. I have reviewed the terms of Sections 3 and 4 of the Credit Agreement and the definitions and provisions contained in the Credit Agreement relating thereto, and, in my opinion, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me to express an informed opinion as to the matters referred to herein.

4. Based upon my review and examination described in paragraph 3 above, I certify, solely in my capacity as the chief financial officer of Holdings and Company, that, as of the date hereof, after giving effect to the incurrence of the Obligations under the Credit Documents, the borrowings under the Term Loan Facility and the other transactions contemplated by the Credit Documents, (a) Holdings and its Subsidiaries (on a consolidated basis) are and will be Solvent and (b) each Borrower is and will be Solvent.

The foregoing certifications are made and delivered as of [ ], 2007.

DOUGLAS DYNAMICS HOLDINGS, INC.
DOUGLAS DYNAMICS, L.L.C.

By: ______________________________
Name:
Title: Chief Financial Officer

EXHIBIT H

COUNTERPART AGREEMENT

This COUNTERPART AGREEMENT, dated [mm/dd/yyyy] (this "Counterpart Agreement"), is delivered pursuant to that certain Credit and Guaranty Agreement, dated as of May 21, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, or otherwise renewed, refinanced or replaced from time to time (including subsequent or successive renewals, refinancings or replacements, and pursuant to one or more agreements or facilities), the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Douglas Dynamics Holdings, Inc., a Delaware corporation

("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company and a direct wholly-owned Subsidiary of Holdings (the "Company" or the "Borrower Representative"), Fisher, LLC, a Delaware limited liability company ("Fisher") and Douglas Dynamics Finance Company, a Delaware corporation ("DD Finance," and together with Fisher and the Borrower Representative, each a "Borrower" and collectively the "Borrowers") the banks and financial institutions having Revolving Loan Commitments or listed on the signature pages thereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), Credit Suisse, Cayman Islands Branch ("Credit Suisse"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and JPMorgan Chase Bank, N.A., as collateral agent for the Lenders (in such capacity, "Collateral Agent").

Section 1. Pursuant to Section 5.10 of the Credit Agreement, the undersigned hereby:

(a) agrees that this Counterpart Agreement may be attached to the Credit Agreement and that by the execution and delivery hereof, the undersigned becomes a Guarantor under the Credit Agreement and agrees to be bound by all of the terms thereof;

(b) represents and warrants that each of the representations and warranties set forth in the Credit Agreement and each other Credit Document and applicable to the undersigned is true and correct both before and after giving effect to this Counterpart Agreement, except to the extent that any such representation and warranty relates solely to any earlier date, in which case such representation and warranty is true and correct as of such earlier date;

(c) no event has occurred or is continuing as of the date hereof, or will result from the transactions contemplated hereby on the date hereof, that would constitute an Event of Default or a Default;

(d) irrevocably and unconditionally guarantees the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) and in accordance with Section 7 of the Credit Agreement; and

(e) (i) agrees that this Counterpart Agreement may be attached to the Pledge and Security Agreement, (ii) agrees that the undersigned will comply with all the terms and conditions of the Pledge and Security Agreement as if it were an original signatory thereto, (iii) grants to Secured Parties (as such term is defined in the Pledge and Security Agreement) a security interest in all of the undersigned's right, title and interest in, to and under all personal property, subject to the limited exclusions set forth in Section 2.3 of the Pledge and Security Agreement, of the undersigned including, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (as each of the following is defined in the Pledge and Security Agreement and all of which being hereinafter collectively referred to as the "Collateral"): Accounts; Chattel Paper; Documents; General Intangibles; Goods; Instruments; Insurance; Intellectual Property; Investment Related Property; Letter of Credit Rights; Money; Receivables and Receivable Records; Commercial Tort Claims; to the extent not otherwise included in the foregoing, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and to the extent not otherwise included in the foregoing, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing, and (iv) delivers to Collateral Agent supplements to all schedules attached to the Pledge and Security Agreement. All such Collateral shall be deemed to be

part of the "Collateral" and hereafter subject to each of the terms and conditions of the Pledge and Security Agreement.

Section 2. The undersigned agrees from time to time, upon request of Administrative Agent, to take such additional actions and to execute and deliver such additional documents and instruments as Administrative Agent may request to effect the transactions contemplated by, and to carry out the intent of, this Counterpart Agreement. Neither this Counterpart Agreement nor any term hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party (including, if applicable, any party required to evidence its consent to or acceptance of this Counterpart Agreement) against whom enforcement of such change, waiver, discharge or termination is sought. Any notice or other communication herein required or permitted to be given shall be given pursuant to Section 10.1 of the Credit Agreement, and all for purposes thereof, the notice address of the undersigned shall be the address as set forth on the signature page hereof. In case any provision in or obligation under this Counterpart Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

THIS COUNTERPART AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Counterpart Agreement to be duly executed and delivered by its duly authorized officer as of the date above first written.

[NAME OF SUBSIDIARY]

By: ______________________________
Name:
Title:

Address for Notices:

____
____
____
Attention:
Telecopier

with a copy to:

____
____
____
Attention:
Telecopier

ACKNOWLEDGED AND ACCEPTED,
as of the date above first written:

CREDIT SUISSE,
acting through its Cayman Islands Branch,
as Administrative Agent

By: ____________________________________
Name:
Title:

By: ____________________________________
Name:
Title:

JPMorgan Chase Bank, N.A.,
as Collateral Agent

By: ____________________________________
Name:
Title:

EXHIBIT I

PLEDGE AND SECURITY AGREEMENT

EXHIBIT J

MORTGAGE

EXHIBIT K

RESTRICTED PAYMENT CERTIFICATE

All calculations under this certificate shall be for the period commencing on the first day of the first full Fiscal Quarter after the Closing Date through and including the last full Fiscal Quarter (taken as one accounting period) preceding the date of determination.

I. Restricted Payment EBITDA

(a) Consolidated Adjusted EBITDA $

(i) to the extent deducted in the calculation of Consolidated Net Income for such period, all losses which are non-recurring: $

(ii) to the extent deducted in the calculation of Consolidated Net Income for such period, interest attributable to Attributable Indebtedness: $

(iii) to the extent deducted in the calculation of Consolidated Net Income for such period, the amount of all dividends accrued or payable (whether or not in cash) by the Company or any of its Subsidiaries in respect of preferred stock (other than (A) dividends on Capital Stock (other than Disqualified Capital Stock) of the Company or such Subsidiary payable solely in Capital Stock (other than Disqualified Capital Stock) of the Company or such Subsidiary, as applicable, and (B) by Subsidiaries of the Company to the Company or its wholly-owned Subsidiaries): $

(b) Sum of Items (i) thru (iii) above: $

(c) Aggregate amount of interest income of the Company and its Subsidiaries during such period paid in cash to the extent reducing Consolidated Adjusted EBITDA: $

(d) All gains which are non-recurring (including any gain from the issuance or sale of any Capital Stock) to the extent included in the calculation of Consolidated Net Income for such period, without duplication: $

(e) Sum of Items, without duplication, (a), (b) and (c): $

Restricted Payment EBITDA (Item (e) minus Item (d)): $

II. **Cumulative Interest Expense**

(a)	Interest expensed or capitalized, paid, accrued, or scheduled to be paid or accrued (including, in accordance with the following sentence, interest attributable to Capital Leases and Attributable Indebtedness) of the Company and its Subsidiaries, including (I) amortization of debt issuance costs, original issue discount, debt discounts or premium and other financing fees and expenses and non-cash interest payments or accruals on any Indebtedness, (II) the interest portion of all deferred payment obligations of the Company and its Subsidiaries, and (III) all commissions, discounts and other fees and charges owed by the Company and its Subsidiaries with respect to bankers' acceptances and letters of credit financings and Hedge Agreements:	$
(b)	All cash dividends paid by the Company or any of its Subsidiaries in respect of preferred stock (other than by Subsidiaries of the Company to the Company or its wholly owned Subsidiaries):	$

Cumulative Interest Expense (the aggregate amount (without duplication and determined in each case in accordance with GAAP) of Items (a) and (b)): $

III. **Restricted Payment Amount**

(a)	Restricted Payment EBITDA:	$
(b)	product of 2.0 multiplied by Cumulative Interest Expense:	$
(c)	Item (a) <u>minus</u> Item (b):(20)	$
(d)	100% of the aggregate net cash proceeds received by the Company from a capital contribution or sale of Capital Stock to Holdings after the Closing Date:	$
(e)	An amount equal to the net amounts received in respect of Investments made under Section 6.7(1) or 6.7(m) of the Credit Agreement in any Person resulting from cash distributions on or cash repayments of any Investments, including payments of interest on Indebtedness, dividends, repayments of loans or advances, or other distributions or other transfers of assets, in each case to Company, DD Finance, Fisher or any of their respective Subsidiaries or from the net cash proceeds from the sale of any such Investment, not to exceed, in each case, the amount of Investments previously made by Company, DD Finance, Fisher or any of their respective Subsidiaries in such Person, less the cost of disposition (and excluding Investments in Subsidiaries):(21)	$
(f)	Sum of Items (c) through (e) above:	$
(g)	Aggregate amount of Restricted Payments made pursuant to Sections 6.5(a)(ii) and 6.5(c)(iv) of the Credit Agreement:	$
(h)	Amounts required to be applied to prepay Loans pursuant to Section 2.13(c) of the Credit Agreement:	$
(i)	(without duplication) amounts applied or utilized pursuant to Section 6.5(d), Section 6.5(f), Section 6.7(1), Section 6.7(m) or Section 6.16(c) of the Credit Agreement:	
(j)	Sum of Items (g) through (i):	$

Restricted Payment Amount (Item (f) <u>minus</u> Item (j)):(22) $

---

(20) Not to be less than zero.

(21) Except in each case, in order to avoid duplication, to the extent any such payment or proceeds have been included in the calculation of Restricted Payment EBITDA.

(22) For purposes of this definition, (i) the amount of any payment or Investment made or returned hereunder, if other than in cash, shall be the fair market value thereof, as determined in the good faith reasonable judgment of the board of directors of the Company (or similar governing body) for such payments or Investments with a value in excess of $1.0 million, and otherwise by an executive officer of the Company at the time made or returned, as applicable, (ii) interest with respect to Capital Leases shall be deemed to accrue at an interest rate reasonably determined in good faith by the Company to be the rate of interest implicit in such Capital Lease in accordance with GAAP and (iii) interest expense attributable to any Indebtedness represented by the guarantee by the Company or any of its Subsidiaries of an obligation of another Person shall be deemed to be the interest expense attributable to the Indebtedness guaranteed.

EXHIBIT L

BORROWING BASE CERTIFICATE

EXHIBIT M

<u>FORM OF COLLATERAL ACCESS AGREEMENT</u>

LANDLORD'S LIEN WAIVER, COLLATERAL ACCESS AGREEMENT AND CONSENT

THIS LANDLORD'S LIEN WAIVER, COLLATERAL ACCESS AGREEMENT AND CONSENT (the "<u>Agreement</u>") is made and entered into as of 2007 by and among (i) , having an office at ("<u>Landlord</u>"), (ii) Credit Suisse, Cayman Islands Branch, having an office at Eleven Madison Avenue, OMA-2, New York, New York 10010, as collateral agent (in such capacity, the "<u>Term Collateral Agent</u>") pursuant to that certain Credit and Guaranty Agreement dated as of May 21, 2007 (the "<u>Term Credit Agreement</u>"), and (iii) JPMorgan Chase Bank, N.A., having an office at 111 East Wisconsin Ave., Floor 15, Milwaukee, WI 53202-4815, as collateral agent (in such capacity the "<u>ABL Collateral Agent</u>" and together with the Term Collateral Agent, hereinafter the

“Collateral Agents”) pursuant to that certain Credit and Guaranty Agreement dated as of May 21, 2007 (the “ABL Credit Agreement,” and together with the Term Credit Agreement, hereinafter the “Credit Agreements”), for the benefit of the Secured Parties under the Credit Agreements. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreements.

R E C I T A L S:

A. Landlord is the record title holder and owner of the real property located at (the “Real Property”).

B. Landlord has leased all or a portion of the Real Property (the “Leased Premises”) to [ ] (“Lessee”) pursuant to a certain lease agreement or agreements described in Schedule A attached hereto (collectively, and as amended, amended and restated, supplemented or otherwise modified from time to time, the “Lease”).

C. Lessee, a [ ] [ ], the Collateral Agents, and the other Secured Parties party thereto, among others, [are entering] [have entered] into the Credit Agreements, pursuant to which the Lenders have agreed to make certain loans to, among others, the Lessee (collectively, the “Loans”). As security for the payment and performance of Lessee’s Obligations under the Credit Agreements and the other documents evidencing and securing the Loans (collectively, the “Loan Documents”), the Collateral Agents (for its benefit and the benefit of the Secured Parties) have or will acquire a security interest in and lien upon all of Lessee’s personal property, inventory, accounts, goods, machinery, equipment, furniture and fixtures (together with all additions, substitutions, replacements and improvements to, and proceeds of, the foregoing, collectively, the “Personal Property”).

D. Collateral Agents have requested that Landlord execute this Agreement as a condition precedent [to the making of the Loans under the Credit Agreements] [to the continued effectiveness of the Credit Agreements].

AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby represents, warrants and agrees in favor of Collateral Agents, as follows:

1. Landlord hereby waives and releases unto Collateral Agents (i) any contractual landlord’s lien and any other landlord’s lien which it may be entitled to at law or in equity against any Personal Property, (ii)

any and all rights granted by or under any present or future laws to levy or distrain for rent or any other charges which may be due to the Landlord against the Personal Property and (iii) any and all claims, liens and demands of every kind which it has or may hereafter have against the Personal Property (including, without limitation, any right to include the Personal Property in any secured financing Landlord may become party to). Landlord acknowledges that the Personal Property is and will remain personal property and not fixtures even though it may be affixed to or placed on the Real Property.

2. Landlord certifies that (i) the Lease is in full force and effect, (ii) no notice of de- fault has been given under or in connection with the Lease which has not been cured, and Landlord has no knowledge of any occurrence of any other default under or in connection with the Lease, and (iii) Lessee is in possession of the Leased Premises.

3. Landlord agrees that Collateral Agents have the right to remove the Personal Property from the Leased Premises at any time prior to the occurrence of a default under the Lease and, after the occurrence of such a default, the Collateral Agents shall give prior notice to Landlord and shall thereafter have a reasonable period of time, not to exceed one hundred twenty (120) days, in which to repossess and/or dispose of the Collateral from the Leased Premises; provided, however, that such 120-day period will be tolled during any period in which the Collateral Agents have been stayed from taking action to remove the Collateral in any bankruptcy, insolvency or similar proceeding, and the Collateral Agents shall have an additional period of time thereafter, not to exceed 120 days in the aggregate, in which to repossess and/or dispose of the Collateral from the Leased Premises; provided further that, at Landlord’s option, Collateral Agents, at their expense, shall repair any damage arising from such removal or reimburse to the Landlord the cost of repairing such damage. Landlord agrees that it will (i) cooperate with the Collateral Agents in gaining access to the Leased Premises for the purpose of repossessing said Collateral and/or assembling and storing the Collateral and (ii) permit the Collateral Agents, any such other person (including the Lessee) or their respective agents or nominees, to sell, lease, dispose of or liquidate any such Collateral on the Leased Premises in a manner reasonably designed to minimize any interference with any other of Landlord’s tenants; provided, however, that Collateral Agents shall pay rent on a per diem basis for the period of time the Collateral Agents remain on the Leased Premises, in an amount equal to the monthly base rent set forth in the Lease (excluding any late fees, charges, assessments or similar sums). Landlord further agrees that, during the foregoing period Landlord will not (x) remove any of the Personal Property from the Leased Premises or (y) hinder Collateral Agents’ actions in removing Personal Property from the Leased Premises or Collateral Agents’ actions in otherwise enforcing its security interest in the Personal Property. Collateral Agents shall not be liable for any diminution in value of the Leased Premises caused by the absence of Personal Property actually removed or by the need to replace the Personal Property after such removal. Landlord acknowledges that Collateral Agents shall have no obligation to remove the Personal Property from the Leased Premises.

4. Landlord acknowledges and agrees that Lessee’s granting of a security interest in the Personal Property in favor of the Collateral Agents (for its benefit and the benefit of the Secured Parties) shall not constitute a default under the Lease nor permit Landlord to terminate the Lease or re-enter or repossess the Leased Premises or otherwise be the basis for the exercise of any remedy by Landlord and Landlord hereby expressly consents to the granting of such security interest.

5. Notwithstanding anything to the contrary contained in this Agreement or the Lease, in the event of a default by Lessee under the Lease, Landlord agrees that (i) it shall provide to Collateral Agents, at the address set forth in the introductory paragraph hereof, a copy of any notice of default delivered to Lessee under the Lease and, if Collateral Agents so elect, an opportunity to cure such default of the lease, and (ii) it shall not exercise any of its remedies against Lessee provided in favor of Landlord under the Lease or at law or in equity until, in the case of a monetary default, the date which is 30 days after the date the Landlord delivers written notice of such monetary default to Collateral Agents, and in the case of a non-monetary default, the date which is 45 days after the date the Landlord delivers written notice of such non-monetary default to Lessee; provided, however, if such non-monetary default by its nature cannot reasonably be cured by Collateral Agents within such 45-day period, the Collateral Agents shall have such additional period of time as may be reasonably necessary to cure such non-monetary default, so long as Lender commences such curative measures within such 45-day period and thereafter proceeds diligently to complete such curative measures. If Collateral Agents or Lessee or any other Person cures any such default, then Landlord shall rescind the notice of default.

6. The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Landlord (including, without limitation, any successor owner of the Real Property) and Collateral Agents. Landlord will disclose the terms and conditions of this Agreement to any purchaser or successor to Landlord’s interest in the Leased Premises.

7. All notices to any party hereto under this Agreement shall be in writing and sent to such party at its respective address set forth above (or at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 9) by certified mail, postage prepaid, return receipt requested or by overnight delivery service.

8. The provisions of this Agreement shall continue in effect until Landlord shall have received Collateral Agents' written certification that the Loans have been paid in full and all of Borrowers' other Obligations under the Credit Agreements and the other Loan Documents have been satisfied.

9. THE INTERPRETATION, VALIDITY AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF.

IN WITNESS WHEREOF, Landlord and Collateral Agents have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

,
as Landlord

By: ______________________________
Name:
Title:

CREDIT SUISSE,
as Term Collateral Agent

By: ______________________________
Name:
Title:

JPMorgan Chase Bank, N.A.,
as ABL Collateral Agent

By: ______________________________
Name:
Title:

Schedule A

Description of Leases

Lessor	Lessee	Dated	Modification	Location/Property Address

EXHIBIT N

INTERCREDITOR AGREEMENT

EXHIBIT O

FIXED CHARGE COVERAGE COMPLIANCE CERTIFICATE

All calculations under this certificate shall be for the 12 month period preceding the date of determination, which shall be the last day of any month.

I. **Consolidated Interest Expense**

(a) total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) payable in cash of the Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Company and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements: (1) $

(b) the aggregate amount of interest income of the Company and its Subsidiaries during such period paid in cash $

Consolidated Interest Expense (Item (a) minus Item (b)) $

II. Consolidated Adjusted EBITDA

(a) Consolidated Net Income: $

(i) Consolidated Interest Expense and non-Cash interest expense $

(ii)	provisions for taxes based on income	$
(iii)	total depreciation expense	$
(iv)	total amortization expense (2)	$
(v)	non-cash impairment charges	$
(vi)	non-cash expenses resulting from the grant of stock and stock options and other compensation to management personnel of the Company and its Subsidiaries pursuant to a written incentive plan or agreement	$
(vii)	other non-Cash items that are unusual or otherwise non-recurring items	$
(viii)	expenses for fees under the Management Services Agreement	$
(ix)	any extraordinary losses and non-recurring charges during any period(3)	$
(x)	restructuring charges or reserves (4)	$

---

(1) Excluding any amounts referred to in Section 2.10(d) of the Credit Agreement payable on or before the Closing Date and amounts with respect to the termination of Interest Rate Agreements entered into within 90 days of the Closing Date.

(2) Including amortization of goodwill, other intangibles, and financing fees and expenses.

(3) Including severance, relocation costs, one-time compensation charges and losses or charges associated with Interest Rate Agreements.

(4) Including costs related to closure of Facilities.

	(xi)	any transaction costs incurred in connection with the issuance of Securities or any refinancing transaction, in each case whether or not such transaction is consummated	$
	(xii)	any fees and expenses related to any Permitted Acquisitions	$
	(xiii)	the Financial Performance Covenant Cure Amount	$
(b)	Sum of Items (i) thru (xiii)		$
	(i)	non-Cash items increasing Consolidated Net Income for such period that are unusual or otherwise non-recurring items	$
	(ii)	cash payments made during such period reducing reserves or liabilities for accruals made in prior periods but only to the extent such reserves or accruals were added back to “Consolidated Adjusted EBITDA” in a prior period pursuant to clauses (vi) or (vii) above	$
	(iii)	Restricted Payments made during such period to Holdings pursuant to Section 6.5(c)(i)	$
(c)	Sum of Items (i) thru (iii)		$
(d)	Sum of Item (a) and (b)(5)		$
Consolidated Adjusted EBITDA (Item (d) minus Item (c)(6)):			$
III.	**Consolidated Fixed Charges**		
(a)	Consolidated Interest Expense		$
(b)	scheduled payments of principal on Consolidated Total Debt		$
(c)	Consolidated Capital Expenditures(7)		$
(d)	the portion of taxes based on income actually paid in cash during such period by the Company or any of its Subsidiaries whether for such period or any other period		$
(e)	Restricted Payments permitted under Section 6.5(c)(iii) of the Credit Agreement and which are paid in cash during such period		$
Consolidated Fixed Charges (Sum of Items (a)-(e)(8))			$

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(5) Without duplication to the extent deducted in the calculation of Consolidated Net Income for such period.

(6) Without duplication.

(7) The aggregate of all expenditures of the Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in “purchase of property and equipment” or similar items reflected in the consolidated statement of cash flows of the Company and its Subsidiaries (other than those financed with secured Indebtedness permitted by Section 6.1 of the Credit Agreement or made or incurred pursuant to Section 6.8(b)(ii) of the Credit Agreement).

(8) Without duplication.

IV. Fixed Charge Coverage Ratio

(a)	Consolidated Adjusted EBITDA	$
(b)	Consolidated Fixed Charges	$
Fixed Charge Coverage Ratio (Item (a) divided by Item (b))		. :1.00

Schedule 4.1
(Organization and Capital Structure)

Full Legal Name	Type of Organization	Jurisdiction of Organization	Capital Structure
Douglas Dynamics Holdings, Inc.	corporation	Delaware	1,000,000 shares of Common Stock 1 share is designated Series B Preferred Stock and 1 share is designated Series C Preferred Stock
Douglas Dynamics, L.L.C.	limited liability company	Delaware	Percentage Interest of limited liability company units
Douglas Dynamics Finance Company	corporation	Delaware	1,000 shares of Common Stock
Fisher, LLC	limited liability company	Delaware	Percentage Interest of limited liability company units

Schedule 4.2
(Capital Stock and Ownership)
[as of May , 2007]

Entity	Capital Structure	Ownership
Douglas Dynamics Holdings, Inc.	1,000,000 shares of Common Stock; 606,656 shares issued and outstanding	Douglas Dynamics Holdings, LLC (50.19%) Ares Corporate Opportunities Fund, L.P. (32.97%) General Electric Pension Trust (15.25%) The remaining stockholders own 1.58% in the aggregate (with each owning less than 0.40% individually).
	1 share is designated Series B Preferred Stock; 1 share of Series B Preferred Stock issued and outstanding	Douglas Dynamics Holdings, LLC (100%)
	1 share is designated Series C Preferred Stock; 1 share of Series C Preferred Stock issued and outstanding	Ares Corporate Opportunities Fund, L.P. (100%)
Douglas Dynamics, L.L.C.	Percentage Interest of limited liability company units	Douglas Dynamics Holdings, Inc. (100%)
Douglas Dynamics Finance Company	1,000 shares of Common Stock	Douglas Dynamics, L.L.C. (100%)
Fisher, LLC	Percentage Interest of limited liability company units	Douglas Dynamics, L.L.C. (100%)

Existence of existing option, warrant, call, right, commitment or other like agreement:

Douglas Dynamics Holdings, Inc.

Grantees (as a group)	Number of Awards Granted
Douglas Management	58,215 options to acquire common stock 8,070 deferred stock units
Douglas Independent Directors	4,124 options to acquire common stock
Aurora Advisors	1,500 options to acquire common stock
Ares Advisors	857 options to acquire common stock

*Note: Approximately 7,800 options to acquire common stock have been reserved for members of Douglas management, but have not been allocated/issued.

Douglas Dynamics, L.L.C.

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.9
(Material Adverse Changes)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.11
(Adverse Proceedings)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

The inclusion of these items on this schedule is not an admission by the Borrower that these items represent a Material Adverse Effect or that such disclosure was required to be set forth as an exception to this representation.

Bjork, David (Case number MICV2005-01131, filed in Massachusetts Superior Court)

- This is a personal injury case with a date of loss of December 16, 2002. Amount of damages is unspecified, and the Company has not reserved any amount with respect to this matter.

D'Angelo, Amy (Case number 98-3281, filed in New York)

- This is a personal injury case with a date of loss of February 4, 1998. Plaintiff is seeking $10,000,000 in damages, and the Company has reserved $25,000 with respect to this matter.

Employment and labor-related claims are listed in Schedule 4.18.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None

Schedule 4.13
(Real Estate Assets)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

<u>4.13(i)</u>

915 Riverview Drive
Johnson City, TN

7777 N. 73rd Street
Milwaukee, WI

50 Gordon Drive
Rockland, ME

4.13(ii)

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.14
(Environmental Matters)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.18
(Employee Matters)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

None.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.19
(Employee Benefit Plans)

Douglas Dynamics Holdings, Inc.

None.

Douglas Dynamics, L.L.C.

Retired/Former Employee Benefit Plans

Douglas Dynamics L.L.C. Insurance Coverage Policy for Retirees, as revised December 31, 2003.

Funding of Pension Plans

As of December 31, 2006, the present value of the aggregate benefit liabilities under the Douglas Dynamics LLC Salaried Pension Plan and the Douglas Dynamics LLC Pension Plan for Hourly Employees exceeded the aggregate current value of the assets under such plans by approximately $5.1 million.

Douglas Dynamics Finance Company

None.

Fisher, LLC

None.

Schedule 4.22
(Certain Existing Liens)

See Schedule 6.2.

Schedule 4.24
(Deposit Accounts)

Description	Bank Account Number	Loan Party	Depository Institution/ Contact Information
Main Operating Account, Concentration Account for all Controlled Disbursement Accounts, Sweep Account for Fisher and Western Lockbox		Douglas Dynamics, L.L.C.	
Accounts Payable Controlled Disbursement account for all DD locations		Douglas Dynamics, L.L.C.	
Flex Spending Claims Controlled Disbursement account for all DD locations		Douglas Dynamics, L.L.C.	
Medical Claims Controlled Disbursement account for all DD locations		Douglas Dynamics, L.L.C.	
Dental Claims Controlled Disbursement account for all DD locations		Douglas Dynamics, L.L.C.	
40l(k) account		Douglas Dynamics, L.L.C.	
Payroll Clearing-WI		Douglas Dynamics, L.L.C.	
general account		Douglas Dynamics Holdings Inc.	
general account		Douglas Dynamics Finance Company	
Payroll Clearing-ME		Fisher, LLC	
Payroll Clearing- TN		Douglas Dynamics, L.L.C.	

Schedule 6.1(f)
(Certain Indebtedness)

None.

Schedule 6.2
(Permitted Liens)

Delaware Secretary of State searched on 04/24/07. Secured Party: Hyster Credit Company, P.O. Box 27248, Tempe, AZ 85285-7248. File no. 2197519, 07/23/2002. One Hyster Model S30XM, One Hyster Model H40XM Lift Truck together with all attachments and accessories.

Delaware Secretary of State searched on 04/24/07. Secured Party: Hyster Credit Company, P.O. Box 4366, Portland, OR 97208. File no. 2200036, 07/29/2002. One Hyster Model S30XM, One Hyster Model H40XM Lift Truck together with all attachments and accessories.

Delaware Secretary of State searched on 04/24/07. Secured Party: Bystronic Inc., 185 Commerce Drive, Hauppauge, NY, 11788. File no. 6046680, 01/27/2006. One BYSTAR 4020-2 (4400 Watt) Job No. 1803.

Schedule 6.7
(Certain Investments)

None.

Schedule 6.12
(Certain Affiliate Transactions)

All transactions, including payments, in respect of the Amended and Restated Joint Management Services Agreement dated as of April 12, 2004.

DOUGLAS DYNAMICS, INC.
2010 STOCK INCENTIVE PLAN

1. Purpose

The purpose of the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan") is to advance the interests of Douglas Dynamics, Inc. (the "Company") by stimulating the efforts of employees, officers, non-employee directors and other service providers, in each case who are selected to be participants, by heightening the desire of such persons to continue working toward and contributing to the success and progress of the Company. The Plan provides for the potential grant of Incentive and Nonqualified Stock Options, Stock Appreciation Rights, Restricted Stock and Restricted Stock Units, any of which may be performance-based, and for Incentive Bonuses, which may be paid in cash or stock or a combination thereof, as determined by the Administrator. Following the adoption of the Plan, no additional awards shall be granted under the Company's Amended and Restated 2004 Stock Incentive Plan.

2. Definitions

As used in the Plan, the following terms shall have the meanings set forth below:

(a) "Administrator" means the Administrator of the Plan in accordance with Section 18.

(b) "Affiliates" shall have the meaning ascribed in Rule 12b-2 promulgated under the Exchange Act.

(c) "Ares" means Ares Corporate Opportunities Fund, L.P., a Delaware limited partnership.

(d) "Aurora Entities" means Aurora Equity Partners II L.P., a Delaware limited partnership and Aurora Overseas Equity Partners II, L.P., a Cayman Islands exempt limited partnership

(e) "Award" means an Incentive Stock Option, Nonqualified Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit or Incentive Bonus granted to a Participant pursuant to the provisions of the Plan, any of which the Administrator may structure to qualify in whole or in part as a Performance Award.

(f) "Award Agreement" means a written agreement or other instrument as may be approved from time to time by the Administrator implementing the grant of each Award. An Agreement may be in the form of an agreement to be executed by both the Participant and the Company (or an authorized representative of the Company) or certificates, notices or similar instruments as approved by the Administrator.

(g) "Beneficial Owner," "Beneficial Ownership" and "Beneficially Owned" shall have the meaning ascribed in Rule 13d-3 under the Exchange Act.

(h) "Board" means the Board of Directors of the Company.

(i) "Cause" means (unless otherwise expressly provided in the Award Agreement or another contract, including an employment agreement):

(1) conviction or indictment of an individual or the entering of a plea of nolo contendere by the individual with respect to any felony, crime involving fraud or misrepresentation, or any other crime (whether or not such felony or crime is connected with his or her employment or service) the effect of which in the judgment of the Board is likely to affect, materially and adversely, the Company and/or any Company Affiliate;

(2) gross misconduct in connection with the performance of the individual's duties;

(3) demonstration of habitual negligence in the performance of the individual's duties; or

(4) fraud or dishonesty in connection with an individual's employment or service, or theft, misappropriation or embezzlement of the Company's and/or any Company Affiliate's funds or other property.

(j) "Change of Control" means (unless otherwise expressly provided in the Award Agreement or another contract, including an employment agreement) the occurrence of one or more of the following, whether accomplished directly or indirectly, or in one or a series of related transactions:

(1) Any Person, other than the Aurora Entities, Ares and their respective Affiliates, becomes the Beneficial Owner, directly or indirectly, of voting securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding voting securities;

(2) During any period of two consecutive years, individuals who at the beginning of such period constituted the Board and any new director (other than a director whose initial assumption of office occurs as a result of either an actual or threatened election contest or other actual or threatened tender offer, solicitation of proxies or consents by or on behalf of a Person other than the Board) whose appointment, election, or nomination for election was approved by a vote of a majority of the directors then still in office who either were directors at the beginning of the period or whose appointment, election or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board;

(3) A reorganization, merger, consolidation, recapitalization, tender offer, exchange offer or other extraordinary transaction involving the Company (a "Fundamental Transaction") becomes effective or is consummated, unless at least 50% of the outstanding voting securities of the surviving or resulting entity (including, without limitation, an entity ("Parent") which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) ("Resulting Entity") are, or are to be, Beneficially Owned, directly or

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indirectly, by all or substantially all of the Persons who were the Beneficial Owners of the outstanding voting securities of the Company immediately prior to such Fundamental Transaction in substantially the same proportions as their Beneficial Ownership, immediately prior to such Fundamental Transaction, of the outstanding voting securities of the Company;

(4) A sale, transfer or any other disposition (including, without limitation, by way of spin-off, distribution, complete liquidation or dissolution) of all or substantially all of the Company's business and/or assets (an "Asset Sale") to an unrelated third party (the "Transferee Entity") is consummated.

(k) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and the rulings and regulations issues thereunder.

(l) "Common Stock" means the Company's common stock, par value $.01, subject to adjustment as provided in Section 12.

(m) "Company" means Douglas Dynamics, Inc., a Delaware corporation, and its successors. For purposes of this definition of Corporation, after the consummation of a Fundamental Transaction or an Asset Sale, the term "successor" shall include, without limitation, the Resulting Entity or Transferee Entity, respectively.

(n) "Company Affiliate" means any person or entity that is a subsidiary of, or controlled directly or indirectly by, Douglas Dynamics, Inc. For the purposes of this definition, "control" means the power to direct the management and policies of a person or entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

(o) "Disability," unless otherwise defined in a Participant's employment agreement with the Company (if any), means an individual's absence from, or material inability to perform his or her usual duties or any comparable duties for, the Company on a full-time basis for 90 consecutive business days or 120 business days in any period of 180 business days as a result of mental or physical illness or injury that is total and permanent, as reasonably determined by the Administrator and that is not susceptible to reasonable accommodation.

(p) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.

(q) "Fair Market Value" means, as of any given date, the closing sales price on such date during normal trading hours (or, if there are no reported sales on such date, on the last date prior to such date on which there were sales) of the Shares on the New York Stock Exchange Composite Tape or, if not listed on such exchange, on any other national securities exchange on which the Shares are listed or on NASDAQ, in any case, as reported in such source as the Administrator shall select. If there is no regular public trading market for such Common Shares, the Fair Market Value of the Shares shall be determined by the Administrator in good faith and in compliance with Section 409A of the Code.

(r) "Incentive Bonus" means a bonus opportunity awarded under Section 9 pursuant to which a Participant may become entitled to receive an amount based on satisfaction of such performance criteria as are specified in the Award Agreement.

(s) "Incentive Stock Option" means a stock option that is intended to qualify as an "incentive stock option" within the meaning of Section 422 of the Code.

(t) "Nonemployee Director" means each person who is, or is elected to be, a member of the Board and who is not an employee of the Company or any Subsidiary.

(u) "Nonqualified Stock Option" means a stock option that is not intended to qualify as an "incentive stock option" within the meaning of Section 422 of the Code.

(v) "Option" means an Incentive Stock Option and/or a Nonqualified Stock Option granted pursuant to Section 6 of the Plan.

(w) "Participant" means any individual described in Section 3 to whom Awards have been granted from time to time by the Administrator and any authorized transferee of such individual.

(x) "Performance Award" means an Award, the grant, issuance, retention, vesting or settlement of which is subject to satisfaction of one or more performance criteria established pursuant to Section 13.

(y) "Person" means an association, a corporation, an individual, a partnership, a trust or any other entity or organization, including a governmental entity and a "person" as that term is used under Section 13(d) or 14 (d) of the Exchange Act.

(z) "Plan" means the Douglas Dynamics, Inc. 2010 Stock Incentive Plan as set forth herein and as amended from time to time.

(aa) "Restricted Stock" means Shares granted pursuant to Section 8 of the Plan.

(bb) "Restricted Stock Unit" means an Award granted to a Participant pursuant to Section 8 pursuant to which Shares or cash in lieu thereof may be issued in the future.

(cc) "Share" means a share of the Common Stock, subject to adjustment as provided in Section 12.

(dd) "Stock Appreciation Right" means a right granted pursuant to Section 7 of the Plan that entitles the Participant to receive, in cash or Shares or a combination thereof, as determined by the Administrator, value equal to or otherwise based on the excess of (i) the Fair Market Value of a specified number of Shares at the time of exercise over (ii) the exercise price of the right, as established by the Administrator on the date of grant.

(ee) "Subsidiary" means any entity (other than the Company) in an unbroken chain of entities beginning with the Company where each of the entities in the unbroken chain other than the last entity owns stock or other equity possessing at least 50 percent or more of the total

combined voting power of all classes of stock or other equity in one of the other entities in the chain, and if specifically determined by the Administrator in the context other than with respect to Incentive Stock Options, may include an entity in which the Company has a significant ownership interest or that is directly or indirectly controlled by the Company.

(ff) "Termination of Employment" means ceasing to serve as an employee of the Company or any Subsidiary or, with respect to a Nonemployee Director or other service provider, ceasing to serve as such for the Company or any Subsidiary, except that with respect to all or any Awards held by a Participant (i) the Administrator may determine, subject to Section 6(c), that an approved leave of absence or approved employment on a less than full-time basis shall be considered a Termination of Employment, (ii) the Administrator may determine that a transition of employment to service with a partnership, joint venture or corporation not meeting the requirements of a Subsidiary in which the Company or a Subsidiary is a party is not considered a Termination of Employment, (iii) service as a member of the Board or other service provider shall constitute continued employment with respect to Awards granted to a Participant while he or she served as an employee and (iv) service as an employee of the Company or a Subsidiary shall constitute continued employment with respect to Awards granted to a Participant while he or she served as a member of the Board or other service provider. The Administrator shall determine whether any corporate transaction, such as a sale or spin-off of a division or subsidiary that employs a Participant, shall be deemed to result in a Termination of Employment with the Company or any Subsidiary for purposes of any affected Participant's Awards, and the Administrator's decision shall be final and binding.

3. Eligibility

Any person who is a current or prospective officer or employee of the Company or of any Subsidiary shall be eligible for selection by the Administrator for the grant of Awards hereunder. In addition, Nonemployee Directors and any other service providers who have been retained to provide consulting, advisory or other services to the Company or to any Subsidiary shall be eligible for the grant of Awards hereunder as determined by the Administrator. Options intending to qualify as Incentive Stock Options may only be granted to employees of the Company or any corporate Subsidiary within the meaning of the Code, as selected by the Administrator.

4. Effective Date and Termination of Plan

This Plan was adopted by the Board and approved by the Company's stockholders on April , 2010. The Plan shall remain available for the grant of Awards until the tenth (10th) anniversary of the Effective Date. Notwithstanding the foregoing, the Plan may be terminated at such earlier time as the Board may determine. Termination of the Plan will not affect the rights and obligations of the Participants and the Company arising under Awards theretofore granted and then in effect.

5. Shares Subject to the Plan and to Awards

(a) *Aggregate Limits.* The aggregate number of Shares issuable pursuant to all Awards shall not exceed . The aggregate number of Shares that may be issued

pursuant to the exercise of Incentive Stock Options granted under this Plan shall not exceed , which number shall be calculated and adjusted pursuant to Section 12 only to the extent that such calculation or adjustment will not affect the status of any option intended to qualify as an Incentive Stock Option under Section 422 of the Code.

(b) *Adjustment.* The aggregate number of Shares available for grant under this Plan and the number of Shares subject to outstanding Awards shall be subject to adjustment as provided in Section 12. The Shares issued pursuant to Awards granted under this Plan may be shares that are authorized and unissued or shares that were reacquired by the Company, including shares purchased in the open market.

(c) *Issuance of Shares.* For purposes of Section 5(a), the aggregate number of Shares issued under this Plan at any time shall equal only the number of Shares actually issued upon exercise or settlement of an Award. The aggregate number of Shares available for Awards under this Plan at any time shall not be reduced by (i) Shares subject to Awards that have been terminated, expired unexercised, forfeited or settled in cash, (ii) Shares subject to Awards that have been retained or withheld by the Company in payment or satisfaction of the exercise price, purchase price or tax withholding obligation of an Award, or (iii) Shares subject to Awards that otherwise do not result in the issuance of Shares in connection with payment or settlement thereof. In addition, Shares that have been delivered (either actually or by attestation) to the Company in payment or satisfaction of the exercise price, purchase price or tax withholding obligation of an Award shall be available for Awards under this Plan.

6. Options

(a) *Option Awards*. Options may be granted at any time and from time to time prior to the termination of the Plan to Participants as determined by the Administrator. No Participant shall have any rights as a stockholder with respect to any Shares subject to an Option hereunder until said Shares have been issued. Each Option shall be evidenced by an Award Agreement. Options granted pursuant to the Plan need not be identical but each Option must contain and be subject to the terms and conditions set forth below.

(b) *Price*. The Administrator will establish the exercise price per Share under each Option, which, in no event will be less than the Fair Market Value of the Shares on the date of grant; provided, however, that the exercise price per Share with respect to an Option that is granted in connection with a merger or other acquisition as a substitute or replacement award for options held by optionees of the acquired entity may be less than 100% of the Fair Market Value of the Shares on the date such Option is granted if such exercise price is based on a formula set forth in the terms of the options held by such optionees or in the terms of the agreement providing for such merger or other acquisition. The exercise price of any Option may be paid in Shares, cash or a combination thereof, as determined by the Administrator, including an irrevocable commitment by a broker to pay over such amount from a sale of the Shares issuable under an Option, the delivery of previously owned Shares and withholding of Shares deliverable upon exercise.

(c) *Provisions Applicable to Options.* The date on which Options become exercisable shall be determined at the sole discretion of the Administrator and set forth in an Award

Agreement. Unless provided otherwise in the applicable Award Agreement, to the extent that the Administrator determines that an approved leave of absence is not a Termination of Employment, the vesting period and/or exercisability of an Option shall be adjusted by the Administrator during or to reflect the effects of any period during which the Participant is on an approved leave of absence or is employed on a less than full-time basis. The Administrator shall establish the term of each Option, which in no case shall exceed a period of ten (10) years from the date of grant.

(d) *Incentive Stock Options*. Notwithstanding anything to the contrary in this Section 6, in the case of the grant of an Option intending to qualify as an Incentive Stock Option: (i) if the Participant owns stock possessing more than 10% of the combined voting power of all classes of stock of the Company (a "10% Stockholder"), the exercise price of such Option must be at least 110% of the Fair Market Value of the Shares on the date of grant and the Option must expire within a period of not more than five (5) years from the date of grant, and (ii) Termination of Employment will occur when the person to whom an Award was granted ceases to be an employee (as determined in accordance with Section 3401(c) of the Code and the regulations promulgated thereunder) of the Company or any Subsidiary. Notwithstanding anything in this Section 6 to the contrary, Options designated as Incentive Stock Options shall not be eligible for treatment under the Code as Incentive Stock Options (and will be deemed to be Nonqualified Stock Options) to the extent that either (1) the aggregate Fair Market Value of Shares (determined as of the time of grant) with respect to which such Options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Subsidiary) exceeds $100,000, taking Options into account in the order in which they were granted, or (2) such Options otherwise remain exercisable but are not exercised within three (3) months of Termination of Employment (or such other period of time provided in Section 422 of the Code). If the requirements for an Option to qualify for incentive stock option tax treatment are changed, this Section 6(d) shall be deemed to be automatically amended to reflect such requirements.

(e) *Effect of Termination of Employment.* Unless an Option earlier expires upon the expiration date established pursuant to Section 6(c), upon a Termination of Employment (i) any portion of the Option that is not exercisable at the time of such Termination of Employment shall be forfeited and canceled as of the date of such Termination of Employment and (ii) a Participant's (or his or her Beneficiary's) rights to exercise any portion of the Option that is exercisable at the time of such Termination of Employment shall be only as follows, in each case, unless otherwise expressly provided in the Award Agreement or another contract, including an employment agreement:

(1) *Death*. If a Participant incurs a Termination of Employment by reason of death, any Option held by such Participant, to the extent then exercisable, may thereafter be exercised by the Participant's Beneficiary for a period of one hundred eighty days from the date of such death or until the expiration of the stated

term of such Option, whichever period is the shorter.

(2) *Disability*. If a Participant incurs a Termination of Employment by reason of Disability, any Option held by such Participant, to the extent then exercisable, may thereafter be exercised by the Participant for a period of one hundred eighty days from

the date of such Termination of Employment or until the expiration of the stated term of such Option, whichever period is the shorter.

(3) *Cause*. If a Participant incurs a Termination of Employment by reason of a termination by the Company for Cause, the entire Option, whether or not then exercisable, shall be immediately forfeited and canceled as of the date of such Termination of Employment.

(f) *Termination for Reasons other than Death, Disability or Cause* If a Participant incurs a Termination of Employment for any reason other than death, Disability or for Cause, any Option held by such Participant, to the extent then exercisable, may thereafter be exercised by the Participant for a period of ninety days from the date of such Termination of Employment or until the expiration of the stated term of such Option, whichever period is the shorter.

7. Stock Appreciation Rights

Stock Appreciation Rights may be granted to Participants from time to time either in tandem with or as a component of other Awards granted under the Plan ("tandem SARs") or not in conjunction with other Awards ("freestanding SARs") and may, but need not, relate to a specific Option granted under Section 6. The provisions of Stock Appreciation Rights need not be the same with respect to each grant or each recipient. Any Stock Appreciation Right granted in tandem with an Award may be granted at the same time such Award is granted or at any time thereafter before exercise or expiration of such Award. All freestanding SARs shall be granted subject to the same terms and conditions applicable to Options as set forth in Section 6 and all tandem SARs shall have the same exercise price, vesting, exercisability, forfeiture and termination provisions as the Award to which they relate. Subject to the provisions of Section 6 and the immediately preceding sentence, the Administrator may impose such other conditions or restrictions on any Stock Appreciation Right as it shall deem appropriate. Stock Appreciation Rights may be settled in Shares, cash or a combination thereof, as determined by the Administrator and set forth in the applicable Award Agreement.

8. Restricted Stock and Restricted Stock Units

(a) *Restricted Stock and Restricted Stock Unit Awards*. Restricted Stock and Restricted Stock Units may be granted at any time and from time to time prior to the termination of the Plan to Participants as determined by the Administrator. Restricted Stock is an award or issuance of Shares the grant, issuance, retention, vesting and/or transferability of which is subject during specified periods of time to such conditions (including continued employment or performance conditions) and terms as the Administrator deems appropriate. Restricted Stock Units are Awards denominated in units of Shares under which the issuance of Shares is subject to such conditions (including continued employment or performance conditions) and terms as the Administrator deems appropriate. Each grant of Restricted Stock and Restricted Stock Units shall be evidenced by an Award Agreement. Unless determined otherwise by the Administrator, each Restricted Stock Unit will be equal to one Share and will entitle a Participant to either the issuance of Shares or payment of an amount of cash determined with reference to the value of Shares. To the extent determined by the Administrator, Restricted Stock and Restricted Stock Units may be satisfied or settled in Shares, cash or a combination thereof. Restricted Stock and

Restricted Stock Units granted pursuant to the Plan need not be identical but each grant of Restricted Stock and Restricted Stock Units must contain and be subject to the terms and conditions set forth below.

(b) *Contents of Agreement*. Each Award Agreement shall contain provisions regarding (i) the number of Shares or Restricted Stock Units subject to such Award or a formula for determining such number, (ii) the purchase price of the Shares, if any, and the means of payment, (iii) the performance criteria, if any, and level of achievement versus these criteria that shall determine the number of Shares or Restricted Stock Units granted, issued, retainable and/or vested, (iv) such terms and conditions on the grant, issuance, vesting and/or forfeiture of the Shares or Restricted Stock Units as may be determined from time to time by the Administrator, (v) the term of the performance period, if any, as to which performance will be measured for determining the number of such Shares or Restricted Stock Units, and (vi) restrictions on the transferability of the Shares or Restricted Stock Units. Shares issued under a Restricted Stock Award may be issued in the name of the Participant and held by the Participant or held by the Company, in each case as the Administrator may provide.

(c) *Vesting and Performance Criteria*. The grant, issuance, retention, vesting and/or settlement of shares of Restricted Stock and Restricted Stock Units will occur when and in such installments as the Administrator determines or under criteria the Administrator establishes, which may include performance criteria.

(d) *Discretionary Adjustments and Limits*. Notwithstanding the satisfaction of any performance goals, the number of Shares granted, issued, retainable and/or vested under an Award of Restricted Stock or Restricted Stock Units on account of either financial performance or personal performance evaluations may, to the extent specified in the Award Agreement, be reduced, but not increased, by the Administrator on the basis of such further considerations as the Administrator shall determine.

(e) *Voting Rights*. Unless otherwise determined by the Administrator, Participants holding shares of Restricted Stock granted hereunder may exercise full voting rights with respect to those shares during the period of restriction. Participants shall have no voting rights with respect to Shares underlying Restricted Stock Units unless and until such Shares are reflected as issued and outstanding shares on the Company's stock ledger.

(f) *Dividends and Distributions*. Participants in whose name Restricted Stock is granted shall be entitled to receive all dividends and other distributions paid with respect to those Shares, unless determined otherwise by the Administrator. The Administrator will determine whether any such dividends or distributions will be automatically reinvested in additional shares of Restricted Stock and subject to the same restrictions on transferability as the Restricted Stock with respect to which they were distributed or whether such dividends or distributions will be paid in cash. Shares underlying Restricted Stock Units shall be entitled to dividends or dividend equivalents only to the extent provided by the Administrator.

(g) *Effect of Termination of Employment*. Upon a Participant's Termination of Employment for any reason (including by reason of death or Disability), any then unvested Restricted Stock or Restricted Stock Units held by the Participant shall be forfeited and canceled

as of the date of such Termination of Employment, unless otherwise expressly provided in the Award Agreement or another contract, including an employment agreement.

9. Incentive Bonuses

(a) *General*. Each Incentive Bonus Award will confer upon the Participant the opportunity to earn a future payment tied to the level of achievement with respect to one or more performance criteria established for a performance period established by the Administrator.

(b) *Incentive Bonus Document.* The terms of any Incentive Bonus will be set forth in an Award Agreement. Each Award Agreement evidencing an Incentive Bonus shall contain provisions regarding (i) the target and maximum amount payable to the Participant as an Incentive Bonus, (ii) the performance criteria and level of achievement versus these criteria that shall determine the amount of such payment, (iii) the term of the performance period as to which performance shall be measured for determining the amount of any payment, (iv) the timing of any payment earned by virtue of performance, (v) restrictions on the alienation or transfer of the Incentive Bonus prior to actual payment, (vi) forfeiture provisions and (vii) such further terms and conditions, in each case not inconsistent with this Plan as may be determined from time to time by the Administrator.

(c) *Performance Criteria*. The Administrator shall establish the performance criteria and level of achievement versus these criteria that shall determine the target and maximum amount payable under an Incentive Bonus, which criteria may be based on financial performance and/or personal performance evaluations.

(d) *Timing and Form of Payment.* The Administrator shall determine the timing of payment of any Incentive Bonus. Payment of the amount due under an Incentive Bonus may be made in cash or in Shares, as determined by the Administrator. The Administrator may provide for or, subject to such terms and conditions as the Administrator may specify, may permit a Participant to elect for the payment of any Incentive Bonus to be deferred to a specified date or event.

(e) *Discretionary Adjustments*. Notwithstanding satisfaction of any performance goals, the amount paid under an Incentive Bonus on account of either financial performance or personal performance evaluations may, to the extent specified in the Award Agreement, be reduced, but not increased, by the Administrator on the basis of such further considerations as the Administrator shall determine.

(f) *Subplans*. Incentive Bonuses payable hereunder may be pursuant to one or more subplans.

(g) *Effect of Termination of Employment.* Upon a Participant's Termination of Employment for any reason (including by reason of death or Disability), the Participant shall receive payment in respect of any Incentive Bonuses only to the extent specified by the Administrator, unless otherwise expressly provided in the Award Agreement or another contract, including an employment agreement. Payments in respect of any such Incentive Bonuses shall be made at the time specified by the Administrator and set forth in the Award Agreement.

10. Deferral of Gains

The Administrator may, in an Award Agreement or otherwise, provide for the deferred delivery of Shares upon settlement, vesting or other events with respect to Restricted Stock or Restricted Stock Units, or in payment or satisfaction of an Incentive Bonus. Notwithstanding anything herein to the contrary, in no event will any deferral of the delivery of Shares or any other payment with respect to any Award be allowed if the Administrator determines, in its sole discretion, that the deferral would result in the imposition of the additional tax under Section 409A(a)(1)(B) of the Code. No award shall provide for deferral of compensation that does not comply with Section 409A of the Code, unless the Board, at the time of grant, specifically provides that the Award is not intended to comply with Section 409A of the Code. The Company shall have no liability to a Participant, or any other party, if an Award that is intended to be exempt from, or compliant with, Section 409A of the Code is not so exempt or compliant or for any action taken by the Board.

11. Conditions and Restrictions Upon Securities Subject to Awards

The Administrator may provide that the Shares issued upon exercise of an Option or Stock Appreciation Right or otherwise subject to or issued under an Award shall be subject to such further agreements, restrictions, conditions or limitations as the Administrator in its discretion may specify prior to the exercise of such Option or Stock Appreciation Right or the grant, vesting or settlement of such Award, including without limitation, conditions on vesting or transferability, forfeiture or repurchase provisions and method of payment for the Shares issued upon exercise, vesting or settlement of such Award (including the actual or constructive surrender of Shares already owned by the Participant) or payment of taxes arising in connection with an Award. Without limiting the foregoing, such restrictions may address the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any Shares issued under an Award, including without limitation (i) restrictions under an insider trading policy or pursuant to applicable law, (ii) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and holders of other Company equity compensation arrangements, (iii) restrictions as to the use of a specified brokerage firm for such resales or other transfers and (iv) provisions requiring Shares to be sold on the open market or to the Company in order to satisfy tax withholding or other obligations.

12. Adjustment of and Changes in the Stock; Certain Transactions

(a) In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities or other property, but excluding regular, quarterly and other periodic cash dividends), stock split or a combination or consolidation of the outstanding Shares into a lesser number of shares, is declared with respect to the Shares, the authorization limits under Section 5(a) shall be increased or decreased proportionately, and the Shares then subject to each Award shall be increased or decreased proportionately without any change in the aggregate purchase price therefore. In the event the Shares shall be changed into or exchanged for a different number or class of shares of stock or securities of the Company or of another corporation, whether through recapitalization, reorganization, reclassification, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other

securities of the Company, or any other similar corporate transaction or event affects the Shares such that an equitable adjustment would be required in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the authorization limits under Section 5(a) shall be adjusted proportionately, and an equitable adjustment shall be made to each Share subject to an Award such that no dilution or enlargement of the benefits or potential benefits occurs. Each such Share then subject to each Award shall be adjusted to the number and class of shares into which each outstanding Share shall be so exchanged such that no dilution or enlargement of the benefits occurs, all without change in the aggregate purchase price for the Shares then subject to each Award. Action by the Administrator pursuant to this Section 12(a) may include adjustment to any or all of: (i) the number and type of Shares (or other securities or other property) that thereafter may be made the subject of Awards or be delivered under the Plan; (ii) the number and type of Shares (or other securities or other property) subject to outstanding Awards; (iii) the purchase price or exercise price of a Share under any outstanding Award or the measure to be used to determine the amount of the benefit payable on an Award; and (iv) any other adjustments the Administrator determines to be equitable. No right to purchase fractional shares shall result from any adjustment in Awards pursuant to this Section 12. In case of any such adjustment, the Shares subject to the Award shall be rounded down to the nearest whole share. The Company shall notify Participants holding Awards subject to any adjustments pursuant to this Section 12(a) of such adjustment, but (whether or not notice is given) such adjustment shall be effective and binding for all purposes of the Plan.

(b) Unless otherwise expressly provided in the Award Agreement or another contract, including an employment agreement, or under the terms of a transaction constituting a Change of Control, the Administrator may provide for the acceleration of the vesting and, if applicable, exercisability of any outstanding Award, or portion thereof, or the lapsing of any conditions of restrictions on or the time for payment in respect of any outstanding Award, or portion thereof upon termination of the Participant's employment following a Change of Control. In addition, unless otherwise expressly provided in the Award Agreement or another contract, including an employment agreement, or under the terms of a transaction constituting a Change of Control, the Administrator may provide that any or all of the following shall occur in connection with a Change of Control: (i) the substitution for the Shares subject to any outstanding Award, or portion thereof, stock or other securities of the surviving corporation or any

successor corporation to the Company, or a parent or subsidiary thereof, in which event the aggregate purchase or exercise price, if any, of such Award, or portion thereof, shall remain the same, (ii) the conversion of any outstanding Award, or portion thereof, into a right to receive cash or other property upon or following the consummation of the Change of Control in an amount equal to the value of the consideration to be received by holders of Common Shares in connection with such transaction for one Share, less the per share purchase or exercise price of such Award, if any, multiplied by the number of Shares subject to such Award, or a portion thereof, (iii) acceleration of the vesting (and, as applicable, the exercisability) of any and/or all outstanding Awards, and/or (iv) the cancellation of any outstanding and unexercised Awards upon or following the consummation of the Change of Control. Any actions or determinations of the Administrator pursuant to this Section 12(b) may, but need not be uniform as to all outstanding Awards, and the Administrator may, but need not treat all holders of outstanding Awards identically.

13. Performance-Based Compensation

The Administrator may establish performance criteria and level of achievement versus such criteria that shall determine the number of Shares to be granted, retained, vested, issued or issuable under or in settlement of or the amount payable pursuant to an Award. Notwithstanding satisfaction of any performance goals, the number of Shares issued under or the amount paid under an award may, to the extent specified in the Award Agreement, be reduced, but not increased, by the Administrator on the basis of such further considerations as the Administrator in its sole discretion shall determine.

14. Transferability

No Award may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated by a Participant other than by will or the laws of descent and distribution, and each Option or Stock Appreciation Right shall be exercisable only by the Participant during his or her lifetime. Notwithstanding the foregoing, to the extent permitted by the Administrator, the person to whom an Award is initially granted (the "Grantee") may transfer an Award to any "family member" of the Grantee (as such term is defined in Section 1(a)(5) of the General Instructions to Form S-8 under the Securities Act of 1933, as amended ("Form S-8")), to trusts solely for the benefit of such family members and to partnerships in which such family members and/or trusts are the only partners; provided that, (i) as a condition thereof, the transferor and the transferee must execute a written agreement containing such terms as specified by the Administrator, and (ii) the transfer is pursuant to a gift or a domestic relations order to the extent permitted under the General Instructions to Form S-8. Except to the extent specified otherwise in the agreement the Administrator provides for the Grantee and transferee to execute, all vesting, exercisability and forfeiture provisions that are conditioned on the Grantee's continued employment, performance or service shall continue to be determined with reference to the Grantee's employment, performance or service (and not to the status of the transferee) after any transfer of an Award pursuant to this Section 14, and the responsibility to pay any taxes in connection with an Award shall remain with the Grantee notwithstanding any transfer other than by will or intestate succession. Any attempted sale, transfer, pledge, assignment, alienation or hypothecation of an Award by a Participant in violation of this Section 14 shall result in forfeiture of such Award.

15. Suspension or Termination of Awards

Except as otherwise provided by the Administrator, if at any time (including after a notice of exercise has been delivered or an award has vested) the Chief Executive Officer or any other person designated by the Administrator (each such person, an "Authorized Officer") reasonably believes that a Participant may have committed any act constituting Cause for termination of employment, or a violation of any non-competition covenant, the Authorized Officer, Administrator or the Board may suspend the Participant's rights to exercise any Option, to vest in an Award, and/or to receive payment for or receive Shares in settlement of an Award pending a determination of whether such an act has been committed.

If the Administrator or an Authorized Officer determines a Participant has committed any act constituting Cause for termination of employment or a violation of any non-competition covenant, then except as otherwise provided by the Administrator, (a) neither the Participant nor

his or her estate nor transferee shall be entitled to exercise any Option or Stock Appreciation Right whatsoever, vest in or have the restrictions on an Award lapse, or otherwise receive payment of an Award, (b) the Participant will forfeit all outstanding Awards and (c) the Participant may be required, at the Administrator's sole discretion, to return and/or repay to the Company any then unvested Shares previously issued under the Plan. In making such determination, the Administrator or an Authorized Officer shall give the Participant an opportunity to appear and present evidence on his or her behalf at a hearing before the Administrator or its designee or an opportunity to submit written comments, documents, information and arguments to be considered by the Administrator.

16. Compliance with Laws and Regulations

This Plan, the grant, issuance, vesting, exercise and settlement of Awards thereunder, and the obligation of the Company to sell, issue or deliver Shares under such Awards, shall be subject to all applicable foreign, federal, state and local laws, rules and regulations, stock exchange rules and regulations, and to such approvals by any governmental or regulatory agency as may be required. The Company shall not be required to register in a Participant's name or deliver any Shares prior to the completion of any registration or qualification of such shares under any foreign, federal, state or local law or any ruling or regulation of any government body which the Administrator shall determine to be necessary or advisable. To the extent the Company is unable to or the Administrator deems it infeasible to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, the Company and its Subsidiaries shall be relieved of any liability with respect to the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained. No Option shall be exercisable and no Shares shall be issued and/or transferable under any other Award unless a registration statement with respect to the Shares underlying such Award is effective and current or the Company has determined that such registration is unnecessary.

In the event an Award is granted to or held by a Participant who is employed or providing services outside the United States, the Administrator may, in its sole discretion, modify the provisions of the Plan or of such Award as they pertain to such individual to comply with applicable foreign law or to recognize differences in local law, currency or tax policy. The Administrator may also impose conditions on the grant, issuance, exercise, vesting, settlement or retention of Awards in order to comply with such foreign law and/or to minimize the Company's obligations with respect to tax equalization for Participants employed outside their home country.

17. Withholding

To the extent required by applicable federal, state, local or foreign law, a Participant shall be required to satisfy, in a manner satisfactory to the Company, any withholding tax obligations that arise by reason of an Option exercise, disposition of Shares issued under an Incentive Stock Option, the vesting of or settlement of an Award, an election pursuant to Section 83(b) of the Code or otherwise with respect to an Award. To the extent a Participant makes an election under Section 83(b) of the Code, within ten days of filing such election with the Internal Revenue Service, the Participant must notify the Company in writing of such election. The Company and

its Subsidiaries shall not be required to issue Shares, make any payment or to recognize the transfer or disposition of Shares until all such obligations are satisfied. The Administrator may provide for or permit these obligations to be satisfied through the mandatory or elective sale of Shares and/or by having the Company withhold a portion of the Shares that otherwise would be issued to him or her upon exercise of the Option or the vesting or settlement of an Award, or by tendering Shares previously acquired.

18. Administration of the Plan

(a) *Administrator of the Plan*. The Plan shall be administered by the Administrator who shall be the Compensation Committee of the Board or, in the absence of a Compensation Committee, the Board itself. Any power of the Administrator may also be exercised by the Board, except to the extent that the grant or exercise of such authority would cause any Award or transaction to become subject to (or lose an exemption under) the short-swing profit recovery provisions of Section 16 of the Securities Exchange Act of 1934 or cause an Award designated as a Performance Award not to qualify for treatment as performance-based compensation under Section 162(m) of the Code. To the extent that any permitted action taken by the Board conflicts with action taken by the Administrator, the Board action shall control. The Compensation Committee may by resolution authorize one or more officers of the Company to perform any or all things that the Administrator is authorized and empowered to do or perform under the Plan, and for all purposes under this Plan, such officer or officers shall be treated as the Administrator; provided, however, that the resolution so authorizing such officer or officers shall specify the total number of Awards (if any) such officer or officers may award pursuant to such delegated authority, and any such Award shall be subject to the form of Award Agreement theretofore approved by the Compensation Committee. No such officer shall designate himself or herself as a recipient of any Awards granted under authority delegated to such officer. The Compensation Committee hereby designates the Secretary of the Company and the head of the Company's human resource function to assist the Administrator in the administration of the Plan and execute agreements evidencing Awards made under this Plan or other documents entered into under this Plan on behalf of the Administrator or the Company. In addition, the Compensation Committee may delegate any or all aspects of the day-to-day administration of the Plan to one or more officers or employees of the Company or any Subsidiary, and/or to one or more agents.

(b) *Powers of Administrator*. Subject to the express provisions of this Plan, the Administrator shall be authorized and empowered to do all things that it determines to be necessary or appropriate in connection with the administration of this Plan, including, without limitation: (i) to prescribe, amend and rescind rules and regulations relating to this Plan and to define terms not otherwise defined herein; (ii) to determine which persons are Participants, to which of such Participants, if any, Awards shall be granted hereunder and the timing of any such Awards; (iii) to grant Awards to Participants and determine the terms and conditions thereof, including the number of Shares subject to Awards and the exercise or purchase price of such Shares and the circumstances under which Awards become exercisable or vested or are forfeited or expire, which terms may but need not be conditioned upon the passage of time, continued employment, the satisfaction of performance criteria, the occurrence of certain events (including a Change of Control), or other factors; (iv) to establish and verify the extent of satisfaction of any performance goals or other conditions applicable to the grant, issuance, exercisability, vesting and/or ability to retain any Award; (v) to prescribe and amend the terms of the agreements or

other documents evidencing Awards made under this Plan (which need not be identical) and the terms of or form of any document or notice required to be delivered to the Company by Participants under this Plan; (vi) to determine the extent to which adjustments are required pursuant to Section 12; (vii) to interpret and construe this Plan, any rules and regulations under this Plan and the terms and conditions of any Award granted hereunder, and to make exceptions to any such provisions if the Administrator, in good faith, determines that it is necessary to do so in light of extraordinary circumstances and for the benefit of the Company; (viii) to approve corrections in the documentation or administration of any Award; (ix) subject to any stockholder approval required in accordance with Section 19, to reduce the exercise price of any Option or Stock Appreciation Right to the Fair Market Value of the Shares at the time of the reduction if the Fair Market Value of the Shares covered by that Option or Stock Appreciation Right has declined since the date it was granted, either directly or through cancellation and regrant of the Option or Stock Appreciation Right; (x) subject to any stockholder approval required in accordance with Section 19, to exchange Options and Stock Appreciation Rights for other Awards; (xi) to cause the Company to purchase outstanding Options and Stock Appreciation Rights for cash or other consideration; (xii) to require or permit Participant elections and/or consents under this Plan to be made by means of such electronic media as the Administrator may prescribe; and (xiii) to make all other determinations deemed necessary or advisable for the administration of this Plan. The Administrator may, in its sole and absolute discretion, without amendment to the Plan, waive or amend the operation of Plan provisions respecting exercise after termination of employment or service to the Company or a Company Affiliate and, except as otherwise provided herein, adjust any of the terms of any Award. The Administrator may also (A) accelerate the date on which any Award granted under the Plan becomes exercisable or (B) accelerate the vesting date or waive or adjust any condition imposed hereunder with respect to the vesting or exercisability of an Award, provided that the Administrator, in good faith, determines that such acceleration, waiver or other adjustment is necessary or desirable in light of extraordinary circumstances.

(c) *Determinations by the Administrator*. All decisions, determinations and interpretations by the Administrator regarding the Plan, any rules and regulations under the Plan and the terms and conditions of or operation of any Award granted hereunder, shall be final and binding on all Participants, beneficiaries, heirs, assigns or other persons holding or claiming rights under the Plan or any Award. The Administrator shall consider such factors as it deems relevant, in its sole and absolute discretion, to making such decisions, determinations and interpretations including, without limitation, the recommendations or advice of any officer or other employee of the Company and such attorneys, consultants and accountants as it may select.

(d) *Subsidiary Awards*. In the case of a grant of an Award to any Participant employed by a Subsidiary, such grant may, if the Administrator so directs, be implemented by the Company issuing any subject Shares to the Subsidiary, for such lawful consideration as the Administrator may determine, upon the condition or understanding that the Subsidiary will transfer the Shares to the Participant in accordance with the terms of the Award specified by the Administrator pursuant to the provisions of the Plan. Notwithstanding any other provision hereof, such Award may be issued by and in the name of the Subsidiary and shall be deemed granted on such date as the Administrator shall determine.

19. Amendment of the Plan or Awards

The Board may amend, alter or discontinue this Plan and the Administrator may amend or alter any agreement or other document evidencing an Award made under this Plan but, except as provided pursuant to the provisions of Section 12, no such amendment shall, without the approval of the stockholders of the Company:

(a) increase the maximum number of Shares for which Awards may be granted under this Plan;

(b) reduce the price at which Options may be granted below the price provided for in Section 6(b);

(c) change the class of persons eligible to be Participants; or

(d) otherwise amend the Plan in any manner requiring stockholder approval by law or under stock exchange listing requirements.

No amendment or alteration to the Plan or an Award or Award Agreement shall be made which would impair the rights of the holder of an Award, without such holder's consent, provided that no such consent shall be required if the Administrator determines in its sole discretion and prior to the date of any Change of Control that such amendment or alteration either is required or advisable in order for the Company, the Plan or the Award to satisfy any law or regulation or to meet the requirements of or avoid adverse financial accounting consequences under any accounting standard.

20. No Liability of Company

The Company and any Subsidiary or affiliate which is in existence or hereafter comes into existence shall not be liable to a Participant or any other person as to: (i) the non-issuance or sale of Shares as to which the Company has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder; and (ii) any tax consequence expected, but not realized, by any Participant or other person due to the receipt, exercise or settlement of any Award granted hereunder.

21. Non-Exclusivity of Plan

Neither the adoption of this Plan by the Board nor the submission of this Plan to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board or the Administrator to adopt such other incentive arrangements as either may deem desirable, including without limitation, the granting of restricted stock or stock options otherwise than under this Plan or an arrangement not intended to qualify under Code Section 162(m), and such arrangements may be either generally applicable or applicable only in specific cases.

22. No Right to Employment, Reelection or Continued Service

Nothing in this Plan or an Award Agreement shall interfere with or limit in any way the right of the Company, its Subsidiaries and/or its affiliates to terminate any Participant's employment, service on the Board or service for the Company at any time or for any reason not prohibited by law, nor shall this Plan or an Award itself confer upon any Participant any right to continue his or her employment or service for any specified period of time. Neither an Award nor any benefits arising under this Plan shall constitute an employment contract with the Company, any Subsidiary and/or its affiliates. Subject to Sections 4 and 19, this Plan and the benefits hereunder may be terminated at any time in the sole and exclusive discretion of the Board without giving rise to any liability on the part of the Company, its Subsidiaries and/or its affiliates.

23. Unfunded Plan

The Plan is intended to be an unfunded plan. Participants are and shall at all times be general creditors of the Company with respect to their Awards. If the Administrator or the Company chooses to set aside funds in a trust or otherwise for the payment of Awards under the Plan, such funds shall at all times be subject to the claims of the creditors of the Company in the event of its bankruptcy or insolvency.

24. Section 409A of the Code

It is intended that any Incentive and Nonqualified Stock Options, Stock Appreciation Rights, and Restricted Stock issued pursuant to this Plan and any Award Agreement shall not constitute "Deferrals of Compensation" within the meaning of Section 409A of the Code and, as a result, shall not be subject to the requirements of Section 409A of the Code. It is further intended that any Restricted Stock Units and Incentive Bonuses issued pursuant to this Plan and any Award Agreement (which may or may not constitute "deferrals of compensation," depending on the terms of each Award) shall avoid any "plan failures" within the meaning of Section 409A(a)(1) of the Code. The Plan is to be interpreted and administered in a manner consistent with these intentions. However, no guarantee or commitment is made that the Plan or any Award Agreement shall be administered in accordance with the requirements of Section 409A of the Code, with respect to amounts that are subject to such requirements, or that the Plan or any Award Agreement shall be administered in a manner that avoids the application of Section 409A of the Code, with respect to amounts that are not subject to such requirements.

25. Required Delay in Payment on Account of a Separation from Service

Notwithstanding any other provision in this Plan or any Award Agreement, if any Award recipient is a "specified employee," as defined in Treasury Regulations section 1.409A-1(i), as of the date of his or her "Separation from Service" (as defined in authoritative IRS guidance under Section 409A of the Code), then, to the extent required by Treasury Regulations section 1.409A-3(i)(2), any payment made to the Award recipient on account of his or her Separation from Service shall not be made before a date that is six months after the date of his or her Separation from Service. The Administrator may elect any of the methods of applying this rule that are permitted under Treasury Regulations section 1.409A-3(i)(2)(ii).

Exhibit 10.33

DOUGLAS DYNAMICS, INC.
GRANT NOTICE FOR 2010 STOCK INCENTIVE PLAN
RESTRICTED STOCK

FOR GOOD AND VALUABLE CONSIDERATION, Douglas Dynamics, Inc. (the "Company"), hereby grants to Participant named below the number of restricted shares of the Company's common stock, par value $0.01 (the "Common Stock") specified below (the "Award"), upon the terms and subject to the conditions set forth in this Grant Notice, the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan") and the Standard Terms and Conditions (the "Standard Terms and Conditions") adopted under such Plan and provided to Participant, each as amended from time to time. This Award is granted pursuant to the Plan and is subject to and qualified in its entirety by the Standard Terms and Conditions.

Name of Participant:

Grant Date:

Number of shares of restricted stock:

Vesting Schedule:

By accepting this Grant Notice, Participant acknowledges that he or she has received and read,and agrees that this Award shall be subject to, the terms of this Grant Notice, the Plan and the Standard Terms and Conditions.

DOUGLAS DYNAMICS, INC.

By ______________________________

Title: ______________________________

____
Participant Signature

Address (please print):

DOUGLAS DYNAMICS, INC.
STANDARD TERMS AND CONDITIONS FOR
RESTRICTED STOCK

These Standard Terms and Conditions apply to the Award of restricted stock granted pursuant to the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan"), which are evidenced by a Grant Notice or an action of the Administrator that specifically refers to these Standard Terms and Conditions. In addition to these Terms and Conditions, the restricted stock shall be subject to the terms of the Plan, which are incorporated into these Standard Terms and Conditions by this reference. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Plan.

1. TERMS OF RESTRICTED STOCK

Douglas Dynamics, Inc., a Delaware corporation (the "Company"), has granted to the Participant named in the Grant Notice provided to said Participant herewith (the "Grant Notice") an award of a number of restricted shares (the "Award" or the "Restricted Stock") of the Company's common stock, par value $0.01 (the "Common Stock") specified in the Grant Notice. The Award is subject to the conditions set forth in the Grant Notice, these Standard Terms and Conditions, and the Plan, each as amended from time to time. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

2. VESTING OF RESTRICTED STOCK

The Award shall not be vested as of the Grant Date set forth in the Grant Notice and shall be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, the Award shall become vested as described in the Grant Notice with respect to that number of shares of Restricted Stock as set forth in the Grant Notice. Shares of Restricted Stock that have vested and are no longer subject to forfeiture are referred to herein as "Vested Shares." Shares of Restricted Stock awarded hereunder that are not vested and remain subject to forfeiture are referred to herein as "Unvested Shares." Notwithstanding anything contained in these Standard Terms and Conditions to the contrary, upon the Participant's Termination of Employment for any reason (including by reason of death or Disability), any then Unvested Shares (after taking into account any accelerated vesting under any agreement between the Participant and the Company, if applicable) held by the Participant shall be forfeited and canceled as of the date of such Termination of Employment.

3. RIGHTS AS STOCKHOLDER

Notwithstanding anything herein to the contrary, the Participant shall not have voting rights or dividends rights with respect to any Unvested Shares. The Participant shall have all of the ownership, voting rights, dividend rights and all other rights of a stockholder of the Company with respect to Vested Shares.

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4. RESTRICTIONS ON RESALES OF SHARES

The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any Vested Shares, including without limitation (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

5. INCOME TAXES

To the extent required by applicable federal, state, local or foreign law, the Participant shall make arrangements satisfactory to the Company for the satisfaction of any

withholding tax obligations that arise by reason of the grant or vesting of the Restricted Stock. The Company shall not be required to issue shares or to recognize the disposition of such shares until such obligations are satisfied. Unless the Participant pays the withholding tax obligations to the Company by cash or check, withholding may be effected, at the Company's option, by withholding Common Stock issuable in connection with the Award (provided that shares of Common Stock may be withheld only to the extent that such withholding will not result in adverse accounting treatment for the Company). The Participant acknowledges that the Company shall have the right to deduct any taxes required to be withheld by law in connection with the Award from any amounts payable by it to the Participant (including, without limitation, future cash wages).

6. NON-TRANSFERABILITY OF UNVESTED SHARES

The Participant represents and warrants that the shares of Restricted Stock are being acquired by the Participant solely for the Participant's own account for investment and not with a view to or for sale in connection with any distribution thereof. The Participant further understands, acknowledges and agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, the Unvested Shares may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of.

7. OTHER AGREEMENTS SUPERSEDED

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding the Restricted Stock. Any prior agreements, commitments or negotiations concerning the Restricted Stock are superseded.

8. LIMITATION OF INTEREST IN SHARES SUBJECT TO RESTRICTED STOCK

Neither the Participant (individually or as a member of a group) nor any beneficiary or other person claiming under or through the Participant shall have any right, title, interest, or privilege in or to any shares of Common Stock allocated or reserved for the purpose of

the Plan or subject to the Grant Notice or these Standard Terms and Conditions except as to such shares of Common Stock, if any, as shall have been issued to such person in connection with the Award. Nothing in the Plan, in the Grant Notice, these Standard Terms and Conditions or any other instrument executed pursuant to the Plan shall confer upon the Participant any right to continue in the Company's employ or service nor limit in any way the Company's right to terminate the Participant's employment at any time for any reason.

9. GENERAL

In the event that any provision of these Standard Terms and Conditions is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it legal, valid and enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such illegal, invalid or unenforceable provision.

The headings preceding the text of the sections hereof are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect.

These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, beneficiaries, successors and assigns.

These Standard Terms and Conditions shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

All questions arising under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

10. ELECTRONIC DELIVERY

By executing the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the Restricted Stock via Company web site or other electronic delivery.

Exhibit 10.34

DOUGLAS DYNAMICS, INC.
GRANT NOTICE FOR 2010 STOCK INCENTIVE PLAN
RESTRICTED STOCK

FOR GOOD AND VALUABLE CONSIDERATION, Douglas Dynamics, Inc. (the "Company"), hereby grants to Participant named below the number of restricted shares of the Company's common stock, par value $0.01 (the "Common Stock") specified below (the "Award"), upon the terms and subject to the conditions set forth in this Grant Notice, the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan") and the Standard Terms and Conditions (the "Standard Terms and Conditions") adopted under such Plan and provided to Participant, each as amended from time to time. This Award is granted pursuant to the Plan and is subject to and qualified in its entirety by the Standard Terms and Conditions.

Name of Participant:

Grant Date:

Number of shares of restricted stock:

Vesting Schedule:

By accepting this Grant Notice, Participant acknowledges that he or she has received and read,and agrees that this Award shall be subject to, the terms of this Grant Notice, the Plan and the Standard Terms and Conditions.

DOUGLAS DYNAMICS, INC.

By ______________________________

Title: ______________________________

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Participant Signature

Address (please print):

DOUGLAS DYNAMICS, INC.
STANDARD TERMS AND CONDITIONS FOR
RESTRICTED STOCK

These Standard Terms and Conditions apply to the Award of restricted stock granted pursuant to the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan"), which are evidenced by a Grant Notice or an action of the Administrator that specifically refers to these Standard Terms and Conditions. In addition to these Terms and Conditions, the restricted stock shall be subject to the terms of the Plan, which are incorporated into these Standard Terms and Conditions by this reference. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Plan.

1. TERMS OF RESTRICTED STOCK

Douglas Dynamics, Inc., a Delaware corporation (the "Company"), has granted to the Participant named in the Grant Notice provided to said Participant herewith (the "Grant Notice") an award of a number of restricted shares (the "Award" or the "Restricted Stock") of the Company's common stock, par value $0.01 (the "Common Stock") specified in the Grant Notice. The Award is subject to the conditions set forth in the Grant Notice, these Standard Terms and Conditions, and the Plan, each as amended from time to time. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

2. VESTING OF RESTRICTED STOCK

The Award shall not be vested as of the Grant Date set forth in the Grant Notice and shall be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, the Award shall become vested as described in the Grant Notice with respect to that number of shares of Restricted Stock as set forth in the Grant Notice. Shares of Restricted Stock that have vested and are no longer subject to forfeiture are referred to herein as "Vested Shares." Shares of Restricted Stock awarded hereunder that are not vested and remain subject to forfeiture are referred to herein as "Unvested Shares." Notwithstanding anything contained in these Standard Terms and Conditions to the contrary, upon the Participant's Termination of Employment for any reason (including by reason of death or Disability), any then Unvested Shares (after taking into account any accelerated vesting under any agreement between the Participant and the Company, if applicable) held by the Participant shall be forfeited and canceled as of the date of such Termination of Employment.

3. RIGHTS AS STOCKHOLDER

From and after the Grant Date, the Participant shall have all of the ownership, voting rights, dividend rights and all other rights of a stockholder of the Company with respect to the Restricted Stock, except that such rights as to Unvested Shares shall terminate

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upon the forfeiture of such Unvested Shares as and to the extent specifically provided in Section 2 above.

4. RESTRICTIONS ON RESALES OF SHARES

The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any Vested Shares, including without limitation (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

5. INCOME TAXES

To the extent required by applicable federal, state, local or foreign law, the Participant shall make arrangements satisfactory to the Company for the satisfaction of any withholding tax obligations that arise by reason of the grant or vesting of the Restricted Stock. The Company shall not be required to issue shares or to recognize the disposition of such shares until such obligations are satisfied. Unless the Participant pays the withholding tax obligations to the Company by cash or check, withholding may be effected, at the Company's option, by withholding Common Stock issuable in connection with the Award (provided that shares of Common Stock may be withheld only to the extent that such withholding will not result in adverse accounting treatment for the Company). The Participant acknowledges that the Company shall have the right to deduct any taxes required to be withheld by law in connection with the Award from any amounts payable by it to the Participant (including, without limitation, future cash wages).

6. NON-TRANSFERABILITY OF UNVESTED SHARES

The Participant represents and warrants that the shares of Restricted Stock are being acquired by the Participant solely for the Participant's own account for investment and not with a view to or for sale in connection with any distribution thereof. The Participant further understands, acknowledges and agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, the Unvested Shares may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of.

7. OTHER AGREEMENTS SUPERSEDED

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding the Restricted Stock. Any prior agreements, commitments or negotiations concerning the Restricted Stock are superseded.

8. LIMITATION OF INTEREST IN SHARES SUBJECT TO RESTRICTED STOCK

Neither the Participant (individually or as a member of a group) nor any beneficiary or other person claiming under or through the Participant shall have any right, title, interest, or privilege in or to any shares of Common Stock allocated or reserved for the purpose of the Plan or subject to the Grant Notice or these Standard Terms and Conditions except as to such shares of Common Stock, if any, as shall have been issued to such person in connection with the Award. Nothing in the Plan, in the Grant Notice, these Standard Terms and Conditions or any other instrument executed pursuant to the Plan shall confer upon the Participant any right to continue in the Company's employ or service nor limit in any way the Company's right to terminate the Participant's employment at any time for any reason.

9. GENERAL

In the event that any provision of these Standard Terms and Conditions is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it legal, valid and enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such illegal, invalid or unenforceable provision.

The headings preceding the text of the sections hereof are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect.

These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, beneficiaries, successors and assigns.

These Standard Terms and Conditions shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

All questions arising under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

10. ELECTRONIC DELIVERY

By executing the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the Restricted Stock via Company web site or other electronic delivery.

Exhibit 10.35

DOUGLAS DYNAMICS, INC.
GRANT NOTICE FOR 2010 STOCK INCENTIVE PLAN
RESTRICTED STOCK UNITS

FOR GOOD AND VALUABLE CONSIDERATION, Douglas Dynamics, Inc. (the "Company"), hereby grants to Participant named below the number of restricted stock units specified below (the "Award"), upon the terms and subject to the conditions set forth in this Grant Notice, the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan") and the Standard Terms and Conditions (the "Standard Terms and Conditions") adopted under such Plan and provided to Participant, each as amended from time to time. Each restricted stock unit subject to this Award represents the right to receive one share of the Company's common stock, par value $0.01 (the "Common Stock"), subject to the conditions set forth in this Grant Notice, the Plan and the Standard Terms and Conditions. This Award is granted pursuant to the Plan and is subject to and qualified in its entirety by the Standard Terms and Conditions.

Name of Participant:

Grant Date:

Number of restricted stock units subject to the Award:

Vesting Schedule:

By accepting this Grant Notice, Participant acknowledges that he or she has received and read, and agrees that this Award shall be subject to, the terms of this Grant Notice, the Plan and the Standard Terms and Conditions.

DOUGLAS DYNAMICS, INC.

By ______________________________

Title: ______________________________

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Participant Signature

Address (please print):

DOUGLAS DYNAMICS, INC.
STANDARD TERMS AND CONDITIONS FOR
RESTRICTED STOCK UNITS

These Standard Terms and Conditions apply to the Award of restricted stock units granted pursuant to the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan"), which are evidenced by a Grant Notice or an action of the Administrator that specifically refers to these Standard Terms and Conditions. In addition to these Terms and Conditions, the restricted stock units shall be subject to the terms of the Plan, which are incorporated into these Standard Terms and Conditions by this reference. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Plan.

1. TERMS OF RESTRICTED STOCK UNITS

Douglas Dynamics, Inc., a Delaware corporation (the "Company"), has granted to the Participant named in the Grant Notice provided to said Participant herewith (the "Grant Notice") an award of a number of restricted stock units (the "Award" or the "Restricted Stock Units") specified in the Grant Notice. Each Restricted Stock Unit represents the right to receive one share of the Company's common stock, $0.01 par value per share (the "Common Stock"), upon the terms and subject to the conditions set forth in the Grant Notice, these Standard Terms and Conditions, and the Plan, each as amended from time to time. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

2. VESTING OF RESTRICTED STOCK UNITS

The Award shall not be vested as of the Grant Date set forth in the Grant Notice and shall be forfeitable unless and until otherwise vested pursuant to the terms of the Grant Notice and these Standard Terms and Conditions. After the Grant Date, subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, the Award shall become vested as described in the Grant Notice with respect to that number of Restricted Stock Units as set forth in the Grant Notice. Notwithstanding anything contained in these Standard Terms and Conditions to the contrary, upon the Participant's Termination of Employment for any reason (including by reason of death or Disability), any then unvested Restricted Stock Units (after taking into account any accelerated vesting under any agreement between the Participant and the Company, if applicable) held by the Participant shall be forfeited and canceled as of the date of such Termination of Employment.

3. SETTLEMENT OF RESTRICTED STOCK UNITS

Vested Restricted Stock Units shall be settled by the delivery to the Participant or a designated brokerage firm of one share of Common Stock per vested Restricted Stock Unit as soon as reasonably practicable following the vesting of such Restricted Stock Units, and in all events no later than March 15 of the year following the year of vesting (unless delivery is deferred pursuant to a nonqualified deferred compensation plan in accordance with the requirements of Section 409A of the Code).

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4. RIGHTS AS STOCKHOLDER

The Participant shall not have voting rights or dividend rights with respect to shares of Common Stock underlying Restricted Stock Units unless and until such shares of Common Stock are reflected as issued and outstanding shares on the Company's stock ledger.

5. RESTRICTIONS ON RESALES OF SHARES

The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any Common Stock issued in respect of vested Restricted Stock Units, including without limitation (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other holders and (c) restrictions as to the

use of a specified brokerage firm for such resales or other transfers.

6. INCOME TAXES

The Company shall not deliver shares in respect of any Restricted Stock Units unless and until the Participant has made arrangements satisfactory to the Administrator to satisfy applicable withholding tax obligations. Unless the Participant pays the withholding tax obligations to the Company by cash or check in connection with the delivery of the Common Stock, withholding may be effected, at the Company's option, by withholding Common Stock issuable in connection with the vesting of the Restricted Stock Units (provided that shares of Common Stock may be withheld only to the extent that such withholding will not result in adverse accounting treatment for the Company). The Participant acknowledges that the Company shall have the right to deduct any taxes required to be withheld by law in connection with the delivery of the Restricted Stock Units from any amounts payable by it to the Participant (including, without limitation, future cash wages).

7. NON-TRANSFERABILITY OF AWARD

The Participant represents and warrants that the Restricted Stock Units are being acquired by the Participant solely for the Participant's own account for investment and not with a view to or for sale in connection with any distribution thereof. The Participant further understands, acknowledges and agrees that, except as otherwise provided in the Plan or as permitted by the Administrator, the Restricted Stock Units may not be sold, assigned, transferred, pledged or otherwise directly or indirectly encumbered or disposed of.

8. OTHER AGREEMENTS SUPERSEDED

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding the Restricted Stock Units. Any prior agreements, commitments or negotiations concerning the Restricted Stock Units are superseded.

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9. LIMITATION OF INTEREST IN SHARES SUBJECT TO RESTRICTED STOCK UNITS

Neither the Participant (individually or as a member of a group) nor any beneficiary or other person claiming under or through the Participant shall have any right, title, interest, or privilege in or to any shares of Common Stock allocated or reserved for the purpose of the Plan or subject to the Grant Notice or these Standard Terms and Conditions except as to such shares of Common Stock, if any, as shall have been issued to such person upon vesting of the Restricted Stock Units. Nothing in the Plan, in the Grant Notice, these Standard Terms and Conditions or any other instrument executed pursuant to the Plan shall confer upon the Participant any right to continue in the Company's employ or service nor limit in any way the Company's right to terminate the Participant's employment at any time for any reason.

10. GENERAL

In the event that any provision of these Standard Terms and Conditions is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it legal, valid and enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such illegal, invalid or unenforceable provision.

The headings preceding the text of the sections hereof are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect.

These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, beneficiaries, successors and assigns.

These Standard Terms and Conditions shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

All questions arising under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

11. ELECTRONIC DELIVERY

By executing the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, and the Restricted Stock Units via Company web site or other electronic delivery.

DOUGLAS DYNAMICS, INC.
GRANT NOTICE FOR 2010 STOCK INCENTIVE PLAN
NONQUALIFIED STOCK OPTIONS

FOR GOOD AND VALUABLE CONSIDERATION, Douglas Dynamics, Inc. (the "Company"), hereby grants to Participant named below the nonqualified stock option (the "Option") to purchase any part or all of the number of shares of its common stock, par value $0.01 (the "Common Stock"), that are covered by this Option, as specified below, at the Exercise Price per share specified below and upon the terms and subject to the conditions set forth in this Grant Notice, the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan") and the Standard Terms and Conditions (the "Standard Terms and Conditions") promulgated under such Plan, each as amended from time to time. This Option is granted pursuant to the Plan and is subject to and qualified in its entirety by the Standard Terms and Conditions.

Name of Participant:

Grant Date:

Number of Shares of Common Stock covered by Option:

Exercise Price Per Share: $

Expiration Date:

Vesting Schedule:

This Option is not intended to qualify as an incentive stock option under Section 422 of the Internal Revenue Code of 1986, as amended. By accepting this Grant Notice, Participant acknowledges that he or she has received and read, and agrees that this Option shall be subject to, the terms of this Grant Notice, the Plan and the Standard Terms and Conditions.

DOUGLAS DYNAMICS, INC.

By ______________________

Title: ______________________

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Participant Signature

Address (please print):

DOUGLAS DYNAMICS, INC.
STANDARD TERMS AND CONDITIONS FOR
NONQUALIFIED STOCK OPTIONS

These Standard Terms and Conditions apply to the Options granted pursuant to the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan"), which are identified as nonqualified stock options and are evidenced by a Grant Notice or an action of the Administrator that specifically refers to these Standard Terms and Conditions. In addition to these Terms and Conditions, the Option shall be subject to the terms of the Plan, which are incorporated into these Standard Terms and Conditions by this reference. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Plan.

1. TERMS OF OPTION

Douglas Dynamics, Inc. (the "Company"), has granted to the Participant named in the Grant Notice provided to said Participant herewith (the "Grant Notice") a nonqualified stock option (the "Option") to purchase up to the number of shares of the Company's common stock (the "Common Stock"), set forth in the Grant Notice. The exercise price per share and the other terms and subject to the conditions of the Option are set forth in the Grant Notice, these Standard Terms and Conditions (as amended from time to time), and the Plan. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

2. NONQUALIFIED STOCK OPTION

The Option is not intended to be an incentive stock option under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code") and will be interpreted accordingly.

3. EXERCISE OF OPTION

The Option shall not be exercisable as of the Grant Date set forth in the Grant Notice. After the Grant Date, to the extent not previously exercised, and subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, the Option shall be exercisable only to the extent it becomes vested, as described in the Grant Notice or the terms of the Plan, to purchase up to that number of shares of Common Stock as set forth in the Grant Notice, provided that (except as set forth in Section 4.A below) the Participant remains employed with the Company and does not experience a Termination of Employment. The vesting period and/or exercisability of an Option may be adjusted by the Administrator to reflect the decreased level of employment during any period in which the Participant is on an approved leave of absence or is employed on a less than full time basis.

To exercise the Option (or any part thereof), the Participant shall deliver to the Company a "Notice of Exercise" in a form specified by the Administrator, specifying the number of whole shares of Common Stock the Participant wishes to purchase and how the Participant's shares of Common Stock should be registered (in the Participant's name

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only or in the Participant's and the Participant's spouse's names as community property or as joint tenants with right of survivorship).

The exercise price (the "Exercise Price") of the Option is set forth in the Grant Notice. The Company shall not be obligated to issue any shares of Common Stock until the Participant shall have paid the total Exercise Price for that number of shares of Common Stock. The Exercise Price may be paid in Common Stock, cash or a

combination thereof, including an irrevocable commitment by a broker to pay over such amount from a sale of the Common Stock issuable under the Option, the delivery of previously owned Common Stock, withholding of shares of Common Stock deliverable upon exercise of the Option, or in such other manners as may be permitted by the Administrator.

Fractional shares may not be exercised. Shares of Common Stock will be issued as soon as practical after exercise. Notwithstanding the above, the Company shall not be obligated to deliver any shares of Common Stock during any period when the Company determines that the exercisability of the Option or the delivery of shares of Common Stock hereunder would violate any federal, state or other applicable laws.

4. EXPIRATION OF OPTION

The Option shall expire and cease to be exercisable as of the earlier of (a) the Expiration Date set forth in the Grant Notice or (b) the date specified below in connection with the Participant's Termination of Employment:

A. If the Participant's Termination of Employment is by reason of death or Disability, the Participant (or the Participant's estate, beneficiary or legal representative) may exercise the Option (regardless of whether then vested or exercisable) until the date that is 180 days following the date of such Termination of Employment.

B. If the Participant's Termination of Employment is for any reason other than death, Disability or Cause, the Participant may exercise any portion of the Option that is vested and exercisable at the time of such Termination of Employment until the date that is 90 days following the date of such Termination of Employment. Any portion of the Option that is not vested and exercisable at the time of such Termination of Employment (after taking into account any accelerated vesting under any agreement between the Participant and the Company, if applicable) shall be forfeited and canceled as of the date of such Termination of Employment.

C. If the Participant's Termination of Employment is by the Company for Cause, the entire Option, whether or not then vested and exercisable, shall be immediately forfeited and canceled as of the date of such Termination of Employment.

5. RESTRICTIONS ON RESALES OF SHARES ACQUIRED PURSUANT TO OPTION EXERCISE

The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by the Participant or other

subsequent transfers by the Participant of any shares of Common Stock issued as a result of the exercise of the Option, including without limitation (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other optionholders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

6. INCOME TAXES

The Company shall not deliver shares of Common Stock in respect of the exercise of any Option unless and until the Participant has made arrangements satisfactory to the Administrator to satisfy applicable withholding tax obligations. Unless the Participant pays the withholding tax obligations to the Company by cash or check in connection with the exercise of the Option, withholding may be effected, at the Company's option, by withholding Common Stock issuable in connection with the exercise of the Option (provided that shares of Common Stock may be withheld only to the extent that such withholding will not result in adverse accounting treatment for the Company). The Participant acknowledges that the Company shall have the right to deduct any taxes required to be withheld by law in connection with the exercise of the Option from any amounts payable by it to the Participant (including, without limitation, future cash wages).

7. NON-TRANSFERABILITY OF OPTION

Except as permitted by the Administrator or as permitted under the Plan, the Participant may not assign or transfer the Option to anyone other than by will or the laws of descent and distribution and the Option shall be exercisable only by the Participant during his or her lifetime. The Company may cancel the Participant's Option if the Participant attempts to assign or transfer it in a manner inconsistent with this Section 7.

8. OTHER AGREEMENTS SUPERSEDED

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding the Option. Any prior agreements, commitments or negotiations concerning the Option are superseded.

9. LIMITATION OF INTEREST IN SHARES SUBJECT TO OPTION

Neither the Participant (individually or as a member of a group) nor any beneficiary or other person claiming under or through the Participant shall have any right, title, interest, or privilege in or to any shares of Common Stock allocated or reserved for the purpose of the Plan or subject to the Grant Notice or these Standard Terms and Conditions except as to such shares of Common Stock, if any, as shall have been issued to such person upon exercise of the Option or any part of it. Nothing in the Plan, in the Grant Notice, these Standard Terms and Conditions or any other instrument executed pursuant to the Plan shall confer upon the Participant any right to continue in the Company's employ or service nor limit in any way the Company's right to terminate the Participant's employment at any time for any reason.

10. GENERAL

In the event that any provision of these Standard Terms and Conditions is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it legal, valid and enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such illegal, invalid or unenforceable provision.

The headings preceding the text of the sections hereof are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect.

These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, beneficiaries, successors and assigns.

These Standard Terms and Conditions shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

All questions arising under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

11. ELECTRONIC DELIVERY

By executing the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, the Option and the Common Stock via Company web site or other electronic delivery.

Exhibit 10.37

DOUGLAS DYNAMICS, INC.
GRANT NOTICE FOR 2010 STOCK INCENTIVE PLAN
INCENTIVE STOCK OPTIONS

FOR GOOD AND VALUABLE CONSIDERATION, Douglas Dynamics, Inc. (the "Company"), hereby grants to Participant named below the incentive stock option (the "Option") to purchase any part or all of the number of shares of its common stock, par value $0.01 (the "Common Stock"), that are covered by this Option, as specified below, at the Exercise Price per share specified below and upon the terms and subject to the conditions set forth in this Grant Notice, the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan") and the Standard Terms and Conditions (the "Standard Terms and Conditions") promulgated under such Plan, each as amended from time to time. This Option is granted pursuant to the Plan and is subject to and qualified in its entirety by the Standard Terms and Conditions.

Name of Participant:

Grant Date:

Number of Shares of Common Stock covered by Option:

Exercise Price Per Share: $

Expiration Date:

Vesting Schedule:

This Option is intended to qualify as an incentive stock option under Section 422 of the Internal Revenue Code of 1986, as amended. By accepting this Grant Notice, Participant acknowledges that he or she has received and read, and agrees that this Option shall be subject to, the terms of this Grant Notice, the Plan and the Standard Terms and Conditions.

DOUGLAS DYNAMICS, INC.

By ______________________________

Title: ______________________________

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Participant Signature

Address (please print):

DOUGLAS DYNAMICS, INC.
STANDARD TERMS AND CONDITIONS FOR
EMPLOYEE INCENTIVE STOCK OPTIONS

These Standard Terms and Conditions apply to the Options granted pursuant to the Douglas Dynamics, Inc. 2010 Stock Incentive Plan (the "Plan"), which are identified as incentive stock options and are evidenced by a Grant Notice or an action of the Administrator that specifically refers to these Standard Terms and Conditions. In addition to these Terms and Conditions, the Option shall be subject to the terms of the Plan, which are incorporated into these Standard Terms and Conditions by this reference. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Plan.

1. TERMS OF OPTION

Douglas Dynamics, Inc. (the "Company"), has granted to the Participant named in the Grant Notice provided to said Participant herewith (the "Grant Notice") an incentive stock option (the "Option") to purchase up to the number of shares of the Company's common stock (the "Common Stock"), set forth in the Grant Notice. The exercise price per share and the other terms and subject to the conditions of the Option are set forth in the Grant Notice, these Standard Terms and Conditions (as amended from time to time), and the Plan. For purposes of these Standard Terms and Conditions and the Grant Notice, any reference to the Company shall include a reference to any Subsidiary.

2. INCENTIVE STOCK OPTION

The Option is intended to qualify as an incentive stock option under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), and will be interpreted accordingly. Section 422 of the Code provides, among other things, that the Participant shall not be taxed upon the exercise of a stock option that qualifies as an incentive stock option provided the Participant does not dispose of the shares of Common Stock acquired upon exercise of such option until the later of two years after such option is granted to the Participant and one year after such option is exercised. Notwithstanding anything to the contrary herein, Section 422 of the Code provides that incentive stock options (including, possibly, the Option) shall not be treated as incentive stock options if and to the extent that the aggregate fair market value of shares of Common Stock (determined as of the time of grant) with respect to which such incentive stock options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and its Subsidiaries) exceeds $100,000, taking options into account in the order in which they were granted. Thus, if and to the extent that any shares of Common Stock issued under a portion of the Option exceeds the foregoing $100,000 limitation, such shares shall not be treated as issued under an incentive stock option pursuant to Section 422 of the Code and shall instead be treated as issued pursuant to nonqualified stock options.

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3. EXERCISE OF OPTION

The Option shall not be exercisable as of the Grant Date set forth in the Grant Notice. After the Grant Date, to the extent not previously exercised, and subject to termination or acceleration as provided in these Standard Terms and Conditions and the Plan, the Option shall be exercisable only to the extent it becomes vested, as described in the Grant Notice or the terms of the Plan, to purchase up to that number of shares of Common Stock as set forth in the Grant Notice, provided that (except as set forth in Section 4.A below) the Participant remains employed with the Company and does not experience a Termination of Employment. The vesting period and/or exercisability of an Option may be adjusted by the Administrator to reflect the decreased level of employment during any period in which the Participant is on an approved leave of absence or is employed on a less than full time basis.

To exercise the Option (or any part thereof), the Participant shall deliver to the Company a "Notice of Exercise" in a form specified by the Administrator, specifying the number of whole shares of Common Stock the Participant wishes to purchase and how the Participant's shares of Common Stock should be registered (in the Participant's name only or in the Participant's and the Participant's spouse's names as community property or as joint tenants with right of survivorship).

The exercise price (the "Exercise Price") of the Option is set forth in the Grant Notice. The Company shall not be obligated to issue any shares of Common Stock until the Participant shall have paid the total Exercise Price for that number of shares of Common Stock. The Exercise Price may be paid in Common Stock, cash or a combination thereof, including an irrevocable commitment by a broker to pay over such amount from a sale of the Common Stock issuable under the Option, the delivery of previously owned Common Stock, withholding of shares of Common Stock deliverable upon exercise of the Option, or in such other manners as may be permitted by the Administrator.

Fractional shares may not be exercised. Shares of Common Stock will be issued as soon as practical after exercise. Notwithstanding the above, the Company shall not be obligated to deliver any shares of Common Stock during any period when the Company determines that the exercisability of the Option or the delivery of shares of Common Stock hereunder would violate any federal, state or other applicable laws.

4. EXPIRATION OF OPTION

The Option shall expire and cease to be exercisable as of the earlier of (a) the Expiration Date set forth in the Grant Notice or (b) the date specified below in connection with the Participant's Termination of Employment:

A. If the Participant's Termination of Employment is by reason of death or Disability, the Participant (or the Participant's estate, beneficiary or legal representative) may exercise the Option (regardless of whether then vested or exercisable) until the date that is 180 days following the date of such Termination of Employment.

B. If the Participant's Termination of Employment is for any reason other than death, Disability or Cause, the Participant may exercise any portion of the Option that is vested and exercisable at the time of such Termination of Employment until the date that is 90 days following the date of such Termination of Employment. Any portion of the Option that is not vested and exercisable at the time of such Termination of Employment (after taking into account any accelerated vesting under any agreement between the Participant and the Company, if applicable) shall be forfeited and canceled as of the date of such Termination of Employment.

C. If the Participant's Termination of Employment is by the Company for Cause, the entire Option, whether or not then vested and exercisable, shall be immediately forfeited and canceled as of the date of such Termination of Employment.

5. RESTRICTIONS ON RESALES OF SHARES ACQUIRED PURSUANT TO OPTION EXERCISE

The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued as a result of the exercise of the Option, including without limitation (a) restrictions under an insider trading policy, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by Participant and other optionholders and (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

6. INCOME TAXES

The Company shall not deliver shares of Common Stock in respect of the exercise of any Option unless and until the Participant has made arrangements satisfactory to the Administrator to satisfy applicable withholding tax obligations. Unless the Participant pays the withholding tax obligations to the Company by cash or check in connection with the exercise of the Option, withholding may be effected, at the Company's option, by withholding Common Stock issuable in connection with the exercise of the Option (provided that shares of Common Stock may be withheld only to the extent that such withholding will not result in adverse accounting treatment for the Company). The Participant acknowledges that the Company shall have the right to deduct any taxes required to be withheld by law in connection with the exercise of the Option from any amounts payable by it to the Participant (including, without limitation, future cash wages).

7. NON-TRANSFERABILITY OF OPTION

Except as permitted by the Administrator or as permitted under the Plan, the Participant may not assign or transfer the Option to anyone other than by will or the laws of descent and distribution and the Option shall be exercisable only by the Participant during his or her lifetime. The Company may cancel the Participant's Option if the Participant attempts to assign or transfer it in a manner inconsistent with this Section 7.

8. OTHER AGREEMENTS SUPERSEDED

The Grant Notice, these Standard Terms and Conditions and the Plan constitute the entire understanding between the Participant and the Company regarding the Option. Any prior agreements, commitments or negotiations concerning the Option are superseded.

9. LIMITATION OF INTEREST IN SHARES SUBJECT TO OPTION

Neither the Participant (individually or as a member of a group) nor any beneficiary or other person claiming under or through the Participant shall have any right, title, interest, or privilege in or to any shares of Common Stock allocated or reserved for the purpose of the Plan or subject to the Grant Notice or these Standard Terms and Conditions except as to such shares of Common Stock, if any, as shall have been issued to such person upon exercise of the Option or any part of it. Nothing in the Plan, in the Grant Notice, these Standard Terms and Conditions or any other instrument executed pursuant to the Plan shall confer upon the Participant any right to continue in the Company's employ or service nor limit in any way the Company's right to terminate the Participant's employment at any time for any reason.

10. GENERAL

In the event that any provision of these Standard Terms and Conditions is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it legal, valid and enforceable, or otherwise deleted, and the remainder of these Standard Terms and Conditions shall not be affected except to the extent necessary to reform or delete such illegal, invalid or unenforceable provision.

The headings preceding the text of the sections hereof are inserted solely for convenience of reference, and shall not constitute a part of these Standard Terms and Conditions, nor shall they affect its meaning, construction or effect.

These Standard Terms and Conditions shall inure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, beneficiaries, successors and assigns.

These Standard Terms and Conditions shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

In the event of any conflict between the Grant Notice, these Standard Terms and Conditions and the Plan, the Grant Notice and these Standard Terms and Conditions shall control. In the event of any conflict between the Grant Notice and these Standard Terms and Conditions, the Grant Notice shall control.

All questions arising under the Plan or under these Standard Terms and Conditions shall be decided by the Administrator in its total and absolute discretion.

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11. ELECTRONIC DELIVERY

By executing the Grant Notice, the Participant hereby consents to the delivery of information (including, without limitation, information required to be delivered to the Participant pursuant to applicable securities laws) regarding the Company and the Subsidiaries, the Plan, the Option and the Common Stock via Company web site or other electronic delivery.