

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

**Amendment No. 7
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
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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)

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- (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. 7 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 and the Financial Industry Regulatory Authority ("FINRA") filing fee. All such expenses will be borne by the Company; none of the expenses will be borne by the selling stockholders.

<u>Type</u>	<u>Amount</u>
SEC Registration Fee	\$ 13,119.20
FINRA Filing Fee	18,900
NYSE Filing Fee	125,000
Legal fees and expenses	1,870,000
Accounting fees and expenses	1,300,000
Printing and engraving expenses	670,000
Transfer agent and registrar fees	3,400
Total	\$ 4,000,419.20

* 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.

<u>Exhibit Number</u>	<u>Title</u>
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.
3.4#	Amended and Restated Bylaws of Douglas Dynamics, Inc., as currently in effect.
3.5#	First Amendment to Amended and Restated Bylaws of Douglas Dynamics, Inc., as currently in effect.
3.6#	Form of Second Amended and Restated Bylaws of Douglas Dynamics, Inc., to be in effect upon consummation of this offering.
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 $\bar{7}$ / 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 ¹ /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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10.4*	Exhibits and Schedules to Senior Secured Revolving 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 April 16, 2010.
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.
10.9#	Employment Agreement between Mark Adamson and Douglas Dynamics, Inc., dated August 27, 2007.
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10.16#	Form of Douglas Dynamics, Inc. Amended and Restated 2004 Stock Incentive Plan.
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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 warrant holders, 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 warrant holders, 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 warrant holders.
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. 7 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Milwaukee, Wisconsin, on May 3, 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. 7 to Registration Statement in the capacities and on the date indicated.

* _____ James L. Janik	President and Chief Executive Officer (Principal Executive Officer) and Director	May 3, 2010
* _____ Robert McCormick	Vice President and Chief Financial Officer (Principal Financial Officer)	May 3, 2010
* _____ Robert Young	Controller	May 3, 2010
* _____ Mark Rosenbaum	Director	May 3, 2010
* _____ Michael Marino	Director	May 3, 2010
* _____ Jack O. Peiffer	Director	May 3, 2010
* _____ Michael W. Wickham	Director	May 3, 2010
* _____ Nav Rahemtulla	Director	May 3, 2010
* _____ Jeffrey Serota	Director	May 3, 2010

*By: /s/ JAMES L. JANIK

James L. Janik
Attorney-in-Fact

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[SIGNATURES](#)

[EXHIBIT INDEX](#)

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;

3

(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

4

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

5

(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.

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6

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 Bischof
Name: Michael Bischof
Title: COO, Logan Circle Partners

Amendment No. 2

Russell Multi-Manager Bond Fund, as a Lender

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

Amendment No. 2

Russell Strategic Bond Fund, as a Lender

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

Amendment No. 2

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

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

Amendment No. 2

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

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

Amendment No. 2

Allina Health System Trust, as a Lender

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

Amendment No. 2

Sunoco Inc Master Retirement Trust, as a Lender

By: /s/ Michael Bischof
Name: Michael Bischof
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

Amendment No. 2

KINGSLAND II, LTD.,
as a Lender

By: Kingsland Capital Management, LLC as Manager

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

Amendment No. 2

KINGSLAND IV, LTD.,
as a Lender

By: Kingsland Capital Management, LLC as Manager

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

Amendment No. 2

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 Director

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

TABLE OF CONTENTS

	<u>Page</u>	
SECTION 1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Accounting Terms	33
1.3	Interpretation, etc.	33
SECTION 2.	LOANS	33
2.1	Term Loans	33
2.2	[RESERVED]	34
2.3	[RESERVED]	34
2.4	Pro Rata Shares; Availability of Funds	34
2.5	Use of Proceeds	35
2.6	Evidence of Debt; Register; Lenders' Books and Records; Notes	35
2.7	Interest on Loans	36
2.8	Conversion/Continuation	37
2.9	Default Interest	38
2.10	Fees	38
2.11	Scheduled Term Loan Payments	38
2.12	Voluntary Prepayments	39
2.13	Mandatory Prepayments	40
2.14	Application of Prepayments/Reductions	41
2.15	General Provisions Regarding Payments	42
2.16	Ratable Sharing	44
2.17	Making or Maintaining Eurodollar Rate Loans	44
2.18	Increased Costs; Capital Adequacy	46
2.19	Taxes; Withholding, etc.	47
2.20	Obligation to Mitigate	49
2.21	Call Protection	50
2.22	Removal or Replacement of a Lender	50
SECTION 3.	CONDITIONS PRECEDENT	51
3.1	Closing Date	51
3.2	Notices	54
SECTION 4.	REPRESENTATIONS AND WARRANTIES	54
4.1	Organization; Requisite Power and Authority; Qualification	54
4.2	Capital Stock and Ownership	55
4.3	Due Authorization	55
4.4	No Conflict	55
4.5	Governmental Consents	55
4.6	Binding Obligation	55
4.7	Financial Condition	56
4.8	Projections	56
4.9	No Material Adverse Change	56
4.10	No Restricted Payments	56
4.11	Litigation; Adverse Facts	57
4.12	Payment of Taxes	57

4.13	Properties	57
4.14	Environmental Matters	58
4.15	No Defaults	59
4.16	Governmental Regulation	59
4.17	Margin Regulations	59
4.18	Employee Matters	59
4.19	Employee Benefit Plans	60
4.20	Certain Fees	60

4.21	Solvency	61
4.22	Collateral	61
4.23	Disclosure	61
4.24	Deposit Accounts	62
SECTION 5.	AFFIRMATIVE COVENANTS	62
5.1	Financial Statements and Other Reports	62
5.2	Existence	65
5.3	Payment of Taxes and Claims	66
5.4	Maintenance of Properties	66
5.5	Insurance	66
5.6	Inspections	66
5.7	Lenders Meetings	67
5.8	Compliance with Laws	67
5.9	Environmental	67
5.10	Subsidiaries	68
5.11	Additional Real Estate Assets	69
5.12	[Reserved]	70
5.13	Further Assurances	70
5.14	ERISA	70
5.15	Maintenance of Credit Rating	70
SECTION 6.	NEGATIVE COVENANTS	70
6.1	Indebtedness	71
6.2	Liens	73
6.3	Sales and Leasebacks	75
6.4	No Further Negative Pledges	76
6.5	Restricted Payments	76
6.6	Restrictions on Subsidiary Distributions	78
6.7	Investments	78
6.8	Calculations	80
6.9	Fundamental Changes; Asset Dispositions; Acquisitions	81
6.10	Disposal of Subsidiary Interests	82
6.11	Fiscal Year	82
6.12	Transactions with Shareholders and Affiliates	83
6.13	Conduct of Business	83
6.14	Permitted Activities of Holdings	83
6.15	Amendments or Waivers of Certain Agreements	83
6.16	Limitation on Payments Relating to Other Debt	84
SECTION 7.	GUARANTY	85

7.1	Guaranty of the Obligations	85
7.2	Contribution by Guarantors	85
7.3	Payment by Guarantors	86
7.4	Liability of Guarantors Absolute	86
7.5	Waivers by Guarantors	88
7.6	Guarantors' Rights of Subrogation, Contribution, etc.	89
7.7	Subordination of Other Obligations	90
7.8	Continuing Guaranty	90
7.9	Authority of Guarantors or Company	90
7.10	Financial Condition of Company	90
7.11	Bankruptcy, etc.	90
7.12	Discharge of Guaranty Upon Sale of Guarantor	91
SECTION 8.	EVENTS OF DEFAULT	91
8.1	Events of Default	91
SECTION 9.	AGENTS	94
9.1	Appointment of Agents	94
9.2	Powers and Duties	95
9.3	General Immunity	95
9.4	Agents Entitled to Act as Lender	96
9.5	Lenders' Representations, Warranties and Acknowledgment	96
9.6	Right to Indemnity	97
9.7	Successor Administrative Agent	97
9.8	Collateral Documents and Guaranty	98
SECTION 10.	MISCELLANEOUS	98
10.1	Notices	98
10.2	Expenses	101
10.3	Indemnity	101
10.4	Set-Off	102
10.5	Amendments and Waivers	103
10.6	Successors and Assigns; Participations	104
10.7	Independence of Covenants	109
10.8	Survival of Representations, Warranties and Agreements	109
10.9	No Waiver; Remedies Cumulative	109
10.10	Marshalling; Payments Set Aside	109
10.11	Severability	110
10.12	Obligations Several; Independent Nature of Lenders' Rights	110
10.13	Headings	110
10.14	APPLICABLE LAW	110
10.15	CONSENT TO JURISDICTION	110
10.16	WAIVER OF JURY TRIAL	111

10.17	Confidentiality	111
10.18	Usury Savings Clause	112
10.19	Counterparts	113
10.20	Effectiveness	113

APPENDICES:	A	[Reserved]
	B	Notice Addresses
SCHEDULES:	4.1	Organization and Capital Structure
	4.2	Capital Stock and Ownership
	4.9	Absence of Certain Changes
	4.11	Litigation
	4.13	Real Estate Assets
	4.14	Environmental
	4.18	Employee Matters
	4.19	Employee Benefit Plans
	4.22	Certain Existing Liens
	4.24	Deposit Accounts
	6.1	Certain Indebtedness
	6.2	Certain Liens
	6.7	Certain Investments
6.12	Certain Affiliate Transactions	
EXHIBITS:	A-1	Funding Notice
	A-2	Conversion/Continuation Notice
	B	Term Loan Note
	C	Compliance Certificate
	D	Opinion of Counsel for Credit Parties
	E	Assignment Agreement
	F	Certificate Re Non-bank Status
	G	Solvency Certificate
	H	Counterpart Agreement
	I	Pledge and Security Agreement
	J	Mortgage
	K	Restricted Payment Certificate
	L	Intercreditor Agreement
M	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**”), 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.

2

“**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.

3

“**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

4

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.

5

“**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).

6

"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 expenses 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

7

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.

8

"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,

9

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 Debt of 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.

10

“**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.

“**Counterparty Agreement**” means a Counterparty 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.

11

“**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.

12

“**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

13

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 do not at any time exceed \$1,000,000, held at a financial institution that is not, for United States 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.

14

“**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 among Holdings, 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.

15

“**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.

16

“**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

17

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

18

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).

19

“**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.

20

“**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

21

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

22

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

23

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

24

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

25

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

26

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.

27

“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

28

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.

29

“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.

30

“**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

31

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.

32

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(c), 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.

33

(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]

[RESERVED]

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

34

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

35

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,

36

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

37

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

38

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

39

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 with 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

40

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 with 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.

41

(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

45

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 therein 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 therein 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

46

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

47

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

48

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)(ii) 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

49

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.

53

- (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.

54

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

55

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.

56

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

57

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 recordings. 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

61

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;

62

(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

63

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;

64

(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).

65

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

66

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

67

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

68

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

69

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 guaranteed 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.

70

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

71

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;

72

(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

73

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

74

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

75

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);

76

- (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

77

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 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 to 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:

78

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- (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)

79

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.

80

- (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;

81

- (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,

82

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.

83

(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

84

“**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 of 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

85

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

86

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

87

(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

88

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

89

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

90

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

91

(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

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 exist 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

95

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

96

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

97

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,

98

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

99

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

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.

100

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

101

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

102

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;

103

- (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

104

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" (**"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

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.

108

(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

109

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

110

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

111

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

112

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.

113

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

2

Exhibit B

Amendment to ABL Credit Agreement

See Exhibit 10.3 to Amendment No. 7 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 amended in 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: _____

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:

A-1-1

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:

A-2-1

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.

B-1

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]

B-2

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:

B-3

TRANSACTIONS ON TERM LOAN NOTE

Table with 5 columns: Date, Amount of Loan Made This Date, Amount of Principal Paid This Date, Outstanding Principal Balance This Date, Notation Made By

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: _____

C-1

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.

I. 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.

C-2

(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.

C-3

(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		

- (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.

C-4

		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

- (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).

C-5

EXHIBIT D

OPINION OF COUNSEL FOR CREDIT PARTIES

D-1

May 21, 2007

Credit Suisse,
Cayman Islands Branch, as
Administrative Agent and Collateral Agent for the
Lenders party to the Credit
Agreement referred to below

Each of the Lenders party to
the Credit Agreement referred to below

Re: *Douglas Dynamics, L.L.C. — Credit and Guaranty Agreement dated as of May 21, 2007*

Ladies and Gentlemen:

We have acted as counsel to Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company (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, the "Guarantors"; the Guarantors together with Holdings and the Borrower, are referred to herein as the "Obligors"), in connection with the Credit and Guaranty Agreement dated as of May 21, 2007 (the "Credit Agreement") among the Obligors, certain lenders party thereto (the "Lenders"), Credit Suisse Securities (USA) L.L.C., as Sole Bookrunner and Sole Lead Arranger, and Credit Suisse, Cayman Islands Branch, as Collateral Agent (the "Collateral Agent"), and as Administrative Agent (the "Administrative Agent") and, together with the Collateral Agent and the Lenders, the "Lender Parties"). Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

In rendering this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction as being true copies, of the following documents and instruments:

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- (i) the Credit Agreement, including all Exhibits and Schedules thereto;
 - (ii) the Notes dated as of May 21, 2007 (the "Notes") made by the Borrowers payable to the order of the Lenders;
 - (iii) the Term Pledge and Security Agreement dated as of May 21, 2007 (the "Security Agreement") among the Obligors and the Collateral Agent;
 - (iv) the Mortgage, Assignment of Leases, Rents and Profits and Security Agreement dated as of May 21, 2007 (the "Wisconsin Mortgage") made by the Company for the benefit of the Collateral Agent;
 - (v) the Mortgage, Assignment of Leases, Rents and Profits and Security Agreement dated as of May 21, 2007 (the "Maine Mortgage") made by the Company for the benefit of the Collateral Agent;
 - (vi) the Mortgage, Assignment of Leases, Rents and Profits and Security Agreement dated as of May 21, 2007 (the "Tennessee Mortgage" and, together with the Wisconsin Mortgage and the Maine Mortgage, the "Real Property Collateral Documents") made by the Company for the benefit of the Collateral Agent;
 - (vii) the Deposit Account Control Agreement dated as of May 21, 2007 (the "Camden National Account Control Agreement") among Fisher, the Collateral Agent, Camden National Bank ("Camden"), and the other parties thereto;
 - (viii) the Deposit Account Control Agreement dated as of May 21, 2007 (the "Chase Account Control Agreement"; and together with the Camden National Account Control Agreement, the "Deposit Account Control Agreements") among the Company, Holdings, DD Finance, the Collateral Agent, JP Morgan Chase Bank, N.A. (together with Camden, the "Deposit Account Banks"), and the other parties thereto;
 - (ix) the financing statements on Form UCC-1 naming each Obligor as debtor to be filed with the Delaware Secretary of State (each a "Financing Statement"); and
 - (x) the Intercreditor Agreement dated as of May 21, 2007 (the "Intercreditor Agreement") among the Collateral Agent, the Administrative Agent, the Obligors and the other parties thereto.

The Credit Agreement, the Notes, the Security Agreement and the Deposit Account Control Agreements are referred to herein collectively as the "Financing Documents." The Financing Documents, the Real Property Collateral Documents and the Intercreditor Agreement

are referred to herein collectively as the "Transaction Documents." Each relevant Obligor's right, title and interest in the personal property collateral described in the Security Agreement is referred to herein collectively as the "UCC Collateral." The Uniform Commercial Code as enacted and in effect in the State of New York is referred to herein as the "NYUCC." The Uniform Commercial Code as enacted and in effect in the State of Delaware is referred to herein as the "Delaware UCC." The NYUCC and the Delaware UCC are each referred to herein as a "UCC." All references or sections or other subparts of the NYUCC include references to the equivalent provisions of the Delaware UCC, unless the context otherwise requires. All terms defined in the NYUCC are used herein as defined therein.

We have assumed without independent investigation that:

- a) The signatures on all documents examined by us are genuine, all individuals executing such documents had all requisite legal capacity and competency and (except in the case of the Obligors) were duly authorized, the documents submitted to us as originals are authentic and the documents submitted to us as certified or reproduction copies conform to the originals;
- b) Except as specifically addressed in our opinions in paragraphs 4(i)(B) and 5, the execution and delivery of the Transaction Documents by any Obligor and performance of its obligations thereunder do not violate any law, regulation, order, judgment or decree applicable to such Obligor;
- c) There are no agreements or understandings between or among any of the parties to the Transaction Documents or third parties that would expand, modify or otherwise affect the terms of the Transaction Documents or the respective rights or obligations of the parties thereunder or that would modify, release, terminate, subordinate or delay the attachment of the security interest and liens granted thereunder;

- d) To the extent that the ability of the Collateral Agent to enforce remedies under the Transaction Documents in respect of UCC Collateral comprised of inventory may be affected thereby, each Obligor is in compliance with the Fair Labor Standards Act (see Citicorp Industrial Credit, Inc. v. Brock, 483 U.S. 27, 107 S.Ct. 2694 (1987)); and
- e) Each Obligor has, and will have at all times relevant to this opinion, rights in the UCC Collateral within the meaning of Section 9-203(b)(2) of the NYUCC.

In rendering this opinion, we have made such inquiries and examined, among other things, originals or copies, certified or otherwise identified to our satisfaction, of such records,

3

agreements, certificates, instruments and other documents as we have considered necessary or appropriate for purposes of this opinion. As to certain factual matters, we have relied to the extent we deemed appropriate and without independent investigation upon the representations and warranties of the Obligors in the Transaction Documents, certificates of officers of the Obligors, copies of which are attached hereto or separately delivered to the Administrative Agent (collectively, the "Officers' Certificate"), or certificates obtained from public officials and others.

Based on the foregoing and in reliance thereon, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that:

1. Each Obligor is a validly existing corporation or limited liability company in good standing under the laws the State of Delaware and has all requisite corporate or limited liability company power to execute, deliver and perform its obligations under the Transaction Documents to which it is a party.
2. The execution and delivery by each Obligor of the Transaction Documents to which it is a party and the performance of its obligations under the Transaction Documents have been duly authorized by all necessary corporate or limited liability company action. Each Transaction Document has been duly executed and delivered by each Obligor party thereto.
3. Each Financing Document constitutes a legal, valid and binding obligation of each Obligor party thereto, enforceable against it in accordance with its terms.
4. The execution and delivery of the Transaction Documents by each Obligor party thereto, and the performance by each Obligor of the Transaction Documents to which it is a party, do not and will not
 - (i) violate (A) the charter or bylaws or similar governing documents of any such Obligor, or (B) based solely upon review of the orders, judgments or decrees identified to us in the Officers' Certificate as constituting all orders, judgments or decrees binding on such Obligor, which are listed in part I of Schedule A hereto (each, a "Governmental Order"), any Governmental Order, or
 - (ii) based solely upon review of the documents identified to us in the Officers' Certificate as constituting all material contracts of the Obligors, which are listed in part II of Schedule A hereto (each a "Material Contract"), (A) result in a material breach of or default under any Material Contract or (B) result in or require the creation or imposition of any lien or encumbrance upon any assets of such Obligor under any Material Contract, other than Permitted Liens.

4

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5. The execution and delivery of the Transaction Documents by each Obligor party thereto and the performance by each Obligor of the Transaction Documents to which it is a party do not and will not violate, or require any filing with or approval of any governmental authority or regulatory body of the State of New York or the United States of America under, any law or regulation of the State of New York or the United States of America applicable to such Obligor that, in our experience, is generally applicable to transactions in the nature of those contemplated by the Transaction Documents, or the Delaware General Corporation Law or the Delaware Limited Liability Company Act, except for filings required for the perfection of Liens.
 6. No Obligor is required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.
 7. Each Obligor has granted a valid security interest in favor of the Collateral Agent, for the benefit of the secured parties in the UCC Collateral described in the Security Agreement, securing the payment and performance of the obligations purported to be secured thereby, to the extent a security interest can be created therein under Article 9 of the NYUCC. Upon the filing of the Financing Statements with the Delaware Secretary of State, such security interest in the UCC Collateral of each Obligor will be perfected to the extent security interests therein can be perfected by the filing of UCC-1 financing statements under Article 9 of the Delaware UCC.
 8. Each Deposit Account Control Agreement is effective to perfect the security interests in the deposit accounts described therein (the "Deposit Accounts") by control (as defined in Section 9-104(a)(2) of the NYUCC).
 9. The execution and delivery by the Obligors of the Financing Documents and the performance of their obligations thereunder do not result in a breach or violation of Regulation U or X of the Board of Governors of the Federal Reserve System. Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T") does not apply to any Lender that is not a "creditor" (as defined in Regulation T). Regulation T defines "creditor" as any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (the "1934 Act")), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the 1934 Act), except for business entities controlling or under common control with the creditor.
 10. Upon delivery to the Collateral Agent in the State of New York of the certificates representing the stock or membership interests of DD Finance and the Borrower, in each case as described on Schedule B hereto (the "Pledged Interests"), in accordance with the provisions of the Security Agreement, the security interest of the Collateral Agent in the Pledged

5

Interests will be perfected and will be prior in right to all other security interests therein created under Article 9 of the NYUCC.

The foregoing opinions are subject to the following exceptions, qualifications and limitations:

- A. We render no opinion herein as to matters involving the laws of any jurisdiction other than (i) the State of New York, (ii) the United States of America, (iii) for purposes of paragraphs 1, 2, 4(i)(A) and 5 above, the Delaware General Corporation Law and the Delaware Limited Liability Company Act and (iv) for purposes of the last sentence of Paragraph 7, the Delaware UCC. We are not engaged in practice in the State of Delaware; however, we are generally familiar with the Delaware General Corporation Law, the Delaware Limited Liability Company Act and the Delaware UCC as currently in effect and have made such inquiries as we consider necessary to render

the opinions contained in Paragraphs 1, 2, 4(i)(A), 5 and 7. We have further assumed without independent investigation that the operating agreement of each Obligor that is a Delaware limited liability company constitutes a legal, valid and binding obligation of each party thereto, enforceable against it in accordance with its terms and, to the extent our opinion in paragraph 2 is dependent on the interpretation of such agreement, it is based on the plain meaning of the provisions thereof in light of the Delaware Limited Liability Company Act. Without limitation, we do not express any opinion regarding any Delaware contract law. This opinion is limited to the effect of the present state of the laws of the State of New York, the United States of America and, to the limited extent set forth above, the laws of the State of Delaware and the facts as they presently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or the interpretations thereof or such facts. Except as expressly set forth in Paragraph 6 above, we express no opinion regarding the Securities Act of 1933, as amended, or any other federal or state securities laws or regulations.

B. Our opinions set forth in paragraphs 3, 7, 8 and 10 are subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors generally (including, without limitation, the effect of statutory or other laws regarding fraudulent transfers or preferential transfers) and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.

C. We express no opinion regarding the effectiveness of (i) any waiver (whether or not stated as such) under the Transaction Documents of, or any consent thereunder relating to, unknown future rights or the rights of any party thereto existing, or duties owing to it, as a matter

6

of law; (ii) any waiver (whether or not stated as such) contained in the Transaction Documents of rights of any party, or duties owing to it, that is broadly or vaguely stated or does not describe the right or duty purportedly waived with reasonable specificity; (iii) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws or due to the negligence or willful misconduct of the indemnified party; (iv) any provision in any Financing Document waiving the right to object to venue in any court; (v) any agreement to submit to the jurisdiction of any Federal Court; (vi) any waiver of the right to jury trial; (vii) the effect on the enforceability of the Credit Agreement or other Transaction Documents against, or on the ability of a secured party to realize upon collateral security pledged or granted by, any Obligor or any other "surety" (which could include a co-borrower jointly liable for loans extended to another co-borrower, a hypothecator of property to secure obligations owed by another person or a common creditor that has subordinated obligations owing to it), of any facts or circumstances occurring after the date hereof that would constitute a defense to the obligation of a surety, unless such defense has been waived effectively by such Obligor or other surety; (viii) any provision purporting to establish evidentiary standards, (ix) any provision to the effect that every right or remedy is cumulative and may be exercised in addition to any other right or remedy or that the election of some particular remedy does not preclude recourse to one or more others; (x) any right of setoff to the extent asserted by a Person other than a Lender under the Financing Documents or (xi) the availability of damages or other remedies not specified in the Transaction Documents in respect of breach of any covenants (other than covenants relating to the payment of principal, interest, indemnities and expenses).

D. We express no opinion as to (i) any waivers or variations of rights of a debtor, including a guarantor, or duties of a secured party under provisions referred to in Section 9-602 of the NYUCC or (ii) any provision in the Security Agreement (A) that may be deemed to permit the Collateral Agent or any other person to sell or otherwise foreclose upon any UCC Collateral, or to apply the proceeds thereof, except in compliance with the NYUCC, applicable laws of the United States and other applicable state and local laws, or (B) that may be deemed to impose on the Collateral Agent standards for the care of the UCC Collateral in the possession or control of the Collateral Agent that would violate Section 9-207 or 9-208 of the NYUCC or to render such standards inapplicable.

E. Our opinion is subject to the effect of Section 552 of the United States Bankruptcy Code (limiting security interests in property acquired after the commencement of a case under the United States Bankruptcy Code). We call to your attention that under the provisions of the NYUCC certain third parties, such as buyers and lessees of goods in the ordinary course of business, licensees of general intangibles (including software) in the ordinary course of business, holders in due course of negotiable instruments, protected purchasers of securities or certain purchasers of security entitlements or financial assets, could acquire an

7

interest in the UCC Collateral free of the security interests of the Lender Parties, even though such security interests are perfected.

F. We express no opinion with respect to (i) the existence, non-existence or value of any UCC Collateral; (ii) any part of the UCC Collateral that is or may be such that a security interest therein is not covered by Article 9 of the NYUCC by virtue of Section 9-109; and (iii) the perfection of the security interests in any portion of the UCC Collateral, including deposit accounts, goods covered by a certificate of title (such as automobiles), patents, trademarks, copyrights, letter-of-credit rights and money, to the extent that filing of a financing statement is not or may not be sufficient to perfect a security interest therein (whether as a result of requirements for control or possession of such collateral, the applicability of preemptive United States laws or of certificate of title statutes or otherwise). We further express no opinion as to transfers of interests or rights in patents, trademarks or copyrights in connection with exercise of remedies against UCC Collateral under the Security Agreement.

G. We express no opinion with respect to (i) the adequacy or accuracy of the descriptions of the UCC Collateral contained in the Security Agreement, in any Financing Statement or in any document prepared in connection therewith, except for the legal adequacy of descriptions of UCC Collateral to the extent that such descriptions consist of the collateral types defined in the NYUCC (other than commercial tort claims); (ii) the enforceability or perfection of any security interest in the proceeds of any UCC Collateral other than pursuant to Section 9-315 of the Delaware UCC; (iii) any security interest in consumer goods or commercial tort claims; or (iv) perfection (or the law governing perfection) of any security interest in timber to be cut or as-extracted collateral (including oil, gas and other minerals).

H. Except as expressly set forth in paragraph 10 above, we express no opinion with respect to the priority (and therefore no opinion as to the respective rights of any creditor, encumbrancer or other third party as against the rights of the Lender Parties) of any security interest in the UCC Collateral.

I. Perfection of the security interests generally will be terminated under the circumstances described in Sections 9-316, 9-507, 9-508 and 9-515 of the NYUCC, unless appropriate action is taken as provided therein. Without limitation, (i) all the financing statements filed must be continued at prescribed intervals by the timely filing of continuation statements and (ii) a new or amended financing statement may be required to be filed to retain any perfected security interest in the event any Obligor changes its name, identity or location (as determined under the NYUCC).

J. With reference to our opinions in paragraph 8 above, we have assumed without independent investigation that (i) each Deposit Account Bank is and at all times

8

hereafter will be the "bank" (as defined in NYUCC Section 9-102(a)(8)) with which the respective Deposit Accounts are maintained, (ii) each of the Deposit Accounts will at all relevant times constitute a "deposit account" within the meaning of Section 9-102(29) of the NYUCC that is established and maintained in accordance with the respective Deposit Account Control Agreement, (iii) the State of New York is and at all times hereafter will be the "bank's jurisdiction" of each Deposit Account Bank within the meaning of Section 9-304(b) of the NYUCC, and (iv) the Deposit Account Control Agreements will remain in full force and effect at all relevant times.

K. We express no opinion with respect to the ownership or quantity of funds from time to time credited to the Deposit Accounts. In this connection, we call to your attention that (i) a transferee of funds from a deposit account, absent collusion, takes the funds free and clear of any security interest, whether or not in violation of the Financing Documents or the Deposit Account Control Agreement and (ii) the Agent's security interest in the Deposit Accounts may be subject to rights of recoupment or set-off by, or a security interest in the Deposit Accounts in favor of, the respective Deposit Account Bank, except to the extent that those rights are validly waived.

L. Our opinions set forth in paragraphs 3, 7 and 10 are subject to the following qualifications: (i) the Collateral Agent may not be entitled to vote the equity interests included in the Collateral (the "Pledged Interests") or to receive dividends or other distributions directly from the issuer thereof prior to becoming the record holder of the Pledged Interests; (ii) none of the Pledged Interests that are securities or any interest therein may be sold or further transferred by the Collateral Agent without registration under the Securities Act, except pursuant to an exemption from registration contained in such Act, and qualification or exemption from qualification under any applicable State securities or Blue Sky laws; and (iii) compliance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976 may be required prior to the exercise of any remedies under the Security Agreement with respect to the Pledged Interests.

M. For purposes of our opinion in paragraph 9, we have assumed without independent investigation that the representations and warranties of the Company set forth in the first and third sentences or Section 4.17 of the Credit Agreement are and will be true and correct at all relevant times. Our opinion in paragraph 9 is subject to (and we express no opinion in respect of) any requirement applicable to a Lender to obtain in good faith a Form FR U-1 or FR G-3 signed by the Obligor. Except as expressly set forth in paragraph 9, we express no opinion with respect to Regulation T of the Board of Governors of the Federal Reserve System.

N. In rendering our opinions expressed in paragraph 4 insofar as they require interpretation of Material Contracts, (i) we express no opinion with respect to the compliance by any Obligor with, or any financial calculations or data in respect of, financial covenants included

9

in any Material Contract, and (ii) we have assumed that the limitation on the amount of Indebtedness under the Credit Agreement for the Revolving Credit Facility in clause (b) of the definition of "Borrowing Base" in such Credit Agreement will be applied as provided therein.

O. With reference to our opinion in paragraph 10 above, we have assumed without independent investigation that (i) the certificates representing the Pledged Interests are indorsed to the Collateral Agent or in blank by an effective indorsement (as such term is defined in the NYUCC), (ii) the Collateral Agent will at all times hereafter maintain possession of the certificates representing the Pledged Interests in the State of New York, and (iii) the Pledged Interests are securities with the meaning of Article 8 of the UCC.

This opinion is rendered as of the date hereof to the Lender Parties in connection with the Transaction Documents and may not be relied upon by any person other than the Lender Parties or by the Lender Parties in any other context. The Lender Parties may not furnish this opinion or copies hereof to any other person except (i) to bank examiners and other regulatory authorities should they so request in connection with their normal examinations, (ii) to the independent auditors and attorneys of the Lender Parties, (iii) pursuant to order or legal process of any court or governmental agency, (iv) in connection with any legal action to which any Lender Party is a party arising out of the transactions contemplated by the Transaction Documents, or (v) to any potential permitted assignee or participant in the interests of any Lender Party under the Transaction Documents for its information. Notwithstanding the foregoing, parties referred to in clause (v) of the immediately preceding sentence who become Lenders after the date hereof may rely on this opinion as if it were addressed to them (provided that such delivery shall not constitute a re-issue or reaffirmation of this opinion as of any date after the date hereof). This opinion may not be quoted without the prior written consent of the Firm.

Very truly yours,

10

SCHEDULE A — GOVERNMENTAL ORDERS AND MATERIAL CONTRACTS

I.

GOVERNMENTAL ORDERS

None.

II.

MATERIAL CONTRACTS

- Indenture dated as of December 16, 2004 among Douglas Dynamics, L.L.C. and Douglas Dynamics Finance Company, as issuers, Douglas Dynamics Holdings, Inc., as guarantor thereunder, and U.S. Bank National Association, as trustee.
 - Tax Sharing Agreement dated as of December 10, 2004 among Douglas Dynamics Holdings, Inc., Douglas Dynamics, L.L.C. and Douglas Dynamics Finance Company.
 - Amended and Restated Joint Management Services Agreement, dated April 12, 2004, among Douglas Dynamics Holdings, Inc., Douglas Dynamics, L.L.C., Aurora Management Partners LLC, and ACOF Management, L.P.
 - Second Amended and Restated Securityholders Agreement dated as of June 30, 2004 among Douglas Dynamics Holdings, Inc. and certain of its stockholders, optionholders and warrantholders.
 - Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and James L. Janik, as amended.
 - Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and James R. Roethle, as amended.
 - Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and Flemming H. Smitsdorff, as amended.
 - Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and Raymond S. Littlefield, as amended.
 - Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and Ralph R. Gould, as amended.
-

SCHEDULE B— PLEDGED INTERESTS

Stock Certificate Number 1 representing 1,000 shares of the common stock of Douglas Dynamics Finance Company held by Douglas Dynamics, L.L.C.

Interest Certificate Number 5 representing all of the outstanding membership interests of Douglas Dynamics, L.L.C.

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 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.

E-1

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]

[NAME OF ASSIGNEE]

Notices:

Notices:

 Attention:
 Telecopier:

 Attention:
 Telecopier:

with a copy to:

with a copy to:

 Attention:
 Telecopier:

 Attention:
 Telecopier:

Wire Instructions:

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:

(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.

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

E-4

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.

E-5

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: _____

F-1

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.

By: _____
Name:
Title: Chief Financial Officer

G-1

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

H-1

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]

H-2

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:

H-3

EXHIBIT I

PLEDGE AND SECURITY AGREEMENT

I-1

EXECUTION VERSION

TERM PLEDGE AND SECURITY AGREEMENT

dated as of May 21, 2007

among

**DOUGLAS DYNAMICS, L.L.C.
DOUGLAS DYNAMICS FINANCE COMPANY
FISHER, LLC
DOUGLAS DYNAMICS HOLDINGS, INC.**

EACH OF THE OTHER GRANTORS PARTY HERETO

and

**CREDIT SUISSE, CAYMAN ISLANDS BRANCH,
as Collateral Agent**

TABLE OF CONTENTS

PAGE

1.1	General Definitions	2
1.2	Definitions; Interpretation	9
SECTION 2. GRANT OF SECURITY		9
2.1	Grant of Security	9
2.2	Intercreditor Agreement	10
2.3	Certain Limited Exclusions	10
SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE		10
3.1	Security for Obligations	10
3.2	Continuing Liability Under Collateral	11
SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS		11
4.1	Generally	11
4.2	Equipment and Inventory	13
4.3	Receivables	14
4.4	Investment Related Property	15
4.5	Intellectual Property	21
4.6	Commercial Tort Claims	24
SECTION 5. FURTHER ASSURANCES; ADDITIONAL GRANTORS		24
5.1	Further Assurances	24
5.2	Additional Grantors	25
SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT		26
6.1	Power of Attorney	26
6.2	No Duty on the Part of Collateral Agent or Secured Parties	27
SECTION 7. REMEDIES		27
7.1	Generally	27
7.2	Application of Proceeds	28
7.3	Sales on Credit	29
7.4	Deposit Accounts	29
7.5	Investment Related Property	29
7.6	Intellectual Property	30
7.7	Cash Proceeds	31
SECTION 8. COLLATERAL AGENT		32
SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS		32
SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM		33
SECTION 11. MISCELLANEOUS		33

SCHEDULE 4.1 — GENERAL INFORMATION	
SCHEDULE 4.2 — LOCATION OF EQUIPMENT AND INVENTORY	
SCHEDULE 4.4 — INVESTMENT RELATED PROPERTY	
SCHEDULE 4.5 — INTELLECTUAL PROPERTY — EXCEPTIONS	
SCHEDULE 4.6 — COMMERCIAL TORT CLAIMS	
EXHIBIT A — PLEDGE SUPPLEMENT	
EXHIBIT B — UNCERTIFICATED SECURITIES CONTROL AGREEMENT	

TERM PLEDGE AND SECURITY AGREEMENT, dated as of May 21, 2007 (this “**Agreement**”), between **EACH OF THE UNDERSIGNED**, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each, a “**Grantor**”), and **CREDIT SUISSE, CAYMAN ISLANDS BRANCH** (“**Credit Suisse**”), as collateral agent for the Secured Parties (as herein defined) (in such capacity as collateral agent, the **Collateral Agent**”).

RECITALS:

WHEREAS, reference is made to that certain Credit and Guaranty Agreement dated as of May 21, 2007 (as amended, restated, supplemented, refinanced or otherwise modified from time to time in accordance with its terms, the “**Credit Agreement**”), 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 hereof (together with their respective successors and assigns, each individually referred to herein as a “**Lender**” and collectively as “**Lenders**”), Credit Suisse, as administrative agent for the Lenders (in such capacity, “**Administrative Agent**”) and as collateral agent for the Lenders (in such capacity, the “**Collateral Agent**”);

WHEREAS, pursuant to the Credit Agreement, the lenders thereunder have extended or will extend certain Loans the Borrower, which Obligations, to be guaranteed

by Holdings, Fisher, DD Finance and future Domestic Subsidiaries of the Company (such parties, together with Company, each a “**Credit Party**,” and collectively, the “**Credit Parties**”) and, in connection therewith, each Grantor has agreed to secure such Grantor’s obligations under the Credit Documents with a First Priority security interest in the Term Priority Collateral and a Second Priority security interest in the ABL Priority Collateral, each in favor of the ABL Collateral Agent;

WHEREAS, the Company has also entered into the certain Credit and Guaranty Agreement dated as of May 21, 2007 (as amended, restated, supplemented, refinanced or otherwise modified from time to time in accordance with its terms, the “**ABL Credit Agreement**”), by and among the Company, as borrower, Holdings, Fisher and DD Finance, as guarantors, the banks and financial institutions listed on the signature pages thereof, Credit Suisse, as administrative agent and JPMorgan Chase Bank, N.A., as collateral agent, whereby the lenders thereunder have extended or will extend certain loans to the Company, to be guaranteed by Holdings and in connection therewith, each of the Company, Holdings and the Subsidiary Guarantors thereunder have agreed to secure such party’s obligations thereunder with a First Priority Security Interest in the ABL Priority Collateral and a Second Priority security interest in the Term Priority Collateral;

WHEREAS, concurrently herewith, the Collateral Agent hereunder and the ABL Collateral Agent have entered into an Intercreditor Agreement which provides for, inter alia, the relative priorities of the security interests granted herein and in the ABL Security Agreement;

WHEREAS, in consideration of the extensions of credit and other accommodations of Lenders as set forth in the Credit Agreement, each Grantor has agreed to secure such Grantor’s obligations under the Credit Documents as set forth herein; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and the Collateral Agent agree as follows:

SECTION 1. DEFINITIONS.

1.1 General Definitions. In this Agreement, the following terms shall have the following meanings:

“**ABL Collateral Agent**” means JPMorgan Chase Bank, N.A., as collateral agent under the ABL Security Agreement, or any permitted successor, replacement or assign.

“**ABL Credit Agreement**” shall have the meaning assigned to such term in the recitals.

“**ABL Credit Documents**” shall mean the ABL Credit Agreement and the other “Credit Documents” as defined in the ABL Credit Agreement.

“**ABL Security Agreement**” means that certain ABL Pledge and Security Agreement dated as of the date hereof, among the Company, the other Grantors party hereto, and JPMorgan Chase Bank, N.A., as collateral agent thereunder.

“**Account Debtor**” shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto.

“**Accounts**” shall mean all “accounts” as defined in Article 9 of the UCC.

“**Agent**” shall have the meaning assigned to such term in the Credit Agreement.

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

“**Additional Grantors**” shall have the meaning set forth in Section 5.3.

“**Assigned Agreements**” shall mean, with respect to any Grantor, all agreements and contracts to which such Grantor is a party as of the date hereof, or to which such Grantor becomes a party after the date hereof.

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

“**Cash Proceeds**” shall have the meaning assigned in Section 7.7.

“**Chattel Paper**” shall mean all “chattel paper” as defined in Article 9 of the UCC, including, without limitation, “electronic chattel paper” or “tangible chattel paper”, as each term is defined in Article 9 of the UCC.

“**Collateral**” shall have the meaning assigned in Section 2.1.

“**Collateral Account**” shall mean any account established by the Collateral Agent.

“**Collateral Agent**” shall have the meaning set forth in the preamble.

“**Collateral Records**” shall mean books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

“**Collateral Support**” shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

“**Commercial Tort Claims**” shall mean all “commercial tort claims” as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.6 (as such schedule may be amended or supplemented from time to time).

“**Commodities Accounts**” (i) shall mean all “commodity accounts” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4 under the heading “**Commodities Accounts**” (as such schedule may be amended or supplemented from time to time).

“**Company**” shall have the meaning set forth in the recitals hereto.

“**Controlled Foreign Corporation**” shall mean “controlled foreign corporation” as defined in the Tax Code.

“**Copyright Licenses**” shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether any Grantor is licensee or

licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.5 (B) (as such schedule may be amended or supplemented from time to time).

“Copyrights” shall mean all United States, and foreign copyrights (including Community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.5(A) (as such schedule may be amended or supplemented from time to time), (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, and (iv) all rights to sue for past, present and future infringements thereof.

“Credit Agreement” shall have the meaning set forth in the recitals hereto.

“Credit Documents” shall have the meaning assigned to such term in the Credit Agreement.

“Deposit Accounts” (i) shall mean all “deposit accounts” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4 under the heading “Deposit Accounts” (as such schedule may be amended or supplemented from time to time).

“Documents” shall mean all “documents” as defined in Article 9 of the UCC.

“Equipment” shall mean: (i) all “equipment” as defined in Article 9 of the UCC, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC) and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

“Event of Default” shall have the meaning assigned to such term in the Credit Agreement.

“First Priority” shall have the meaning assigned to such term in the Credit Agreement.

“General Intangibles” (i) shall mean all “general intangibles” as defined in Article 9 of the UCC, including “payment intangibles” also as defined in Article 9 of the UCC and (ii) shall include, without limitation, all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations, all Assigned Agreements and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

“Goods” (i) shall mean all “goods” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

“Grantors” shall have the meaning set forth in the preamble.

“Holdings” shall have the meaning set forth in the recitals hereto.

“Instruments” shall mean all “instruments” as defined in Article 9 of the UCC.

“Insurance” shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof) and (ii) any key man life insurance policies.

“Intellectual Property” shall mean, collectively, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses.

“Intercreditor Agreement” shall mean the Intercreditor Agreement dated the date hereof, among the Company, the Collateral Agent hereunder and the ABL Collateral Agent, as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

“Inventory” shall mean (i) all “inventory” as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor’s business; all goods in which any Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by any Grantor, all computer programs embedded in any

goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

“Investment Accounts” shall mean the Collateral Account, Securities Accounts, Commodities Accounts and Deposit Accounts.

“Investment Related Property” shall mean: (i) all “investment property” (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit.

“Lender” shall have the meaning assigned to such term in the Credit Agreement.

“Letter of Credit Right” shall mean “letter-of-credit right” as defined in Article 9 of the UCC.

“Lien” shall have the meaning assigned to such term in the Credit Agreement.

“Material Adverse Effect” shall have the meaning assigned to such term in the Credit Agreement.

“Money” shall mean “money” as defined in the UCC.

“Obligations” shall have the meaning assigned to such term in the Credit Agreement.

“Patent Licenses” shall mean all agreements providing for the granting of any right in or to Patents (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.5(D) (as such schedule may be amended or supplemented from time to time).

“Patents” shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.5(C) hereto (as such schedule may be amended or supplemented from

time to time), (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (ii) all rights corresponding thereto throughout the world, (ii) all inventions and improvements described therein, and (iv) all rights to sue for past, present and future infringements thereof, (v) all licenses, claims, damages, and proceeds of suit arising therefrom.

“Permitted Lien” shall have the meaning given to such term in the Credit Agreement.

“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.

“Pledge Supplement” shall mean any supplement to this agreement in substantially the form of Exhibit A.

“Pledged Debt” shall mean all Indebtedness owed to any Grantor, regardless of whether evidenced by instrument or promissory note, including, without limitation, all Indebtedness described on Schedule 4.4(A) under the heading “Pledged Debt” (as such schedule may be amended or supplemented from time to time), issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

“Pledged Equity Interests” shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

“Pledged LLC Interests” shall mean all interests in any limited liability company including, without limitation, all limited liability company interests listed on Schedule 4.4(A) under the heading “Pledged LLC Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such limited liability company interests and any interest of any Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

“Pledged Partnership Interests” shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 4.4(A) under the heading “Pledged Partnership Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such partnership interests and any interest of any Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

“Pledged Stock” shall mean all shares of capital stock owned by any Grantor, including, without limitation, all shares of capital stock described on Schedule 4.4(A) under the heading “Pledged Stock” (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of any Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

“Pledged Trust Interests” shall mean all interests in a Delaware business trust or other trust including, without limitation, all trust interests listed on Schedule 4.4(A) under the heading “Pledged Trust Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such trust interests and any interest of any Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received,

receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

“Proceeds” shall mean: (i) all “proceeds” as defined in Article 9 of the UCC, (ii) payments or distributions made with respect to any Investment Related Property and (iii) whatever is receivable or received when Collateral or proceeds are sold, leased, licensed, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

“Receivables” shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor’s rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

“Receivables Records” shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of any Grantor or any computer bureau or agent from time to time acting for any Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

“Record” shall have the meaning specified in Article 9 of the UCC.

“Refinance” means, in respect of any indebtedness, to refinance, extend, renew, defease, amend, modify, supplement, restructure, replace, refund or repay, or to issue other indebtedness, in exchange or replacement for, such indebtedness in whole or in part. **“Refinanced”** and **“Refinancing”** shall have correlative meanings.

“Secured Obligations” shall have the meaning assigned in Section 3.1.

“Secured Parties” shall mean the Collateral Agent, each Agent and the Lenders and shall include, without limitation, all former Lenders to the extent that any Obligations owing to such Persons were incurred while such Persons were Lenders and such Obligations have not been paid or satisfied in full.

“Securities” shall mean 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 Accounts**” (i) shall mean all “securities accounts” as defined in Article 8 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(A) under the heading “Securities Accounts” (as such schedule may be amended or supplemented from time to time).

“**Subsidiary Guarantor**” shall mean any Subsidiary of the Company that becomes a Guarantor in accordance with Section 5.10 of the Credit Agreement.

“**Supporting Obligation**” shall mean all “supporting obligations” as defined in Article 9 of the UCC.

“**Tax Code**” shall mean the United States Internal Revenue Code of 1986, as amended from time to time.

“**Trademark Licenses**” shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.5(F) (as such schedule may be amended or supplemented from time to time).

“**Trademarks**” shall mean all United States, and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing including, but not limited to: (i) the registrations and applications referred to in Schedule 4.5 (E) (as such schedule may be amended or supplemented from time to time), (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, and (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill.

“**Trade Secret Licenses**” shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.5 (G) (as such schedule may be amended or supplemented from time to time).

“**Trade Secrets**” shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to the right to sue for past, present and future misappropriation or other violation of any Trade Secret.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

“**United States**” shall mean the United States of America.

1.2 Definitions; Interpretation. All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. References to “Sections,” “Exhibits” and “Schedules” shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. 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 nonlimiting 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. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. If any conflict or inconsistency exists between this Agreement, the ABL Security Agreement and the Intercreditor Agreement with respect to the rights and obligations of the Collateral Agent hereunder and the ABL Collateral Agent, the Intercreditor Agreement shall control. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

SECTION 2. GRANT OF SECURITY.

2.1 Grant of Security. Each Grantor hereby grants to the Collateral Agent for its benefit and for the benefit of the other Secured Parties, a security interest in and continuing lien on all of such Grantor’s right, title and interest in, to and under all personal property of such Grantor including, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which being hereinafter collectively referred to as the “**Collateral**”):

- (a) Accounts;
- (b) Chattel Paper;
- (c) Documents;
- (d) General Intangibles;
- (e) Goods;
- (f) Instruments;
- (g) Insurance;
- (h) Intellectual Property;
- (i) Investment Related Property;
- (j) Letter of Credit Rights;

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- (k) Money;
 - (l) Receivables and Receivable Records;
 - (m) Commercial Tort Claims;
 - (n) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing;

and

to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

2.2 Intercreditor Agreement. Notwithstanding anything to the contrary contained in this Agreement, the priorities with respect to all security interests granted to the Collateral Agent hereunder and under the other Credit Documents and to the ABL Collateral Agent under the ABL Security Agreement and the other ABL Credit Documents shall be governed by the terms and provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

2.3 Certain Limited Exclusions. Notwithstanding anything herein to the contrary, in no event shall the security interest granted under Section 2.1 hereof attach to (a) any lease, license, contract, property rights or agreement to which any Grantor is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Grantor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity), provided however that, in the case of either (i) or (ii) above, such security interest shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such Lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above; or (b) any of the outstanding capital stock of a Controlled Foreign Corporation in excess of 66% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote; provided that immediately upon the amendment of the Tax Code to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and the security interest granted by each Grantor shall attach to, such greater percentage of capital stock of each Controlled Foreign Corporation.

SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.

3.1 Security for Obligations. This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of 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 any successor provision thereof)), of all Obligations with respect to every Grantor (the “Secured Obligations”).

3.2 Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Party, (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

4.1 Generally.

(a) **Representations and Warranties.** Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons other than Permitted Liens;

(ii) it has indicated on Schedule 4.1(A) (as such schedule may be amended or supplemented from time to time): (A) the type of organization of such Grantor, (B) the jurisdiction of organization of such Grantor, (C) its organizational identification number, if any, and (D) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date hereof has been, located;

(iii) the full legal name of such Grantor is as set forth on Schedule 4.1(A) and it has not done in the last five (5) years, and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B) (as such schedule may be amended or supplemented from time to time);

(iv) except as provided on Schedule 4.1(C), it has not changed its name, jurisdiction of organization, chief executive office or sole place of business (or principal residence if such Grantor is a natural person) or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years;

(v) upon the filing of all UCC financing statements naming each Grantor as “debtor” and the Collateral Agent as “secured party” and describing the Collateral in the filing offices set forth opposite such Grantor’s name on Schedule 4.1(D)

hereof (as such schedule may be amended or supplemented from time to time), upon execution of a control agreement, in form and substance satisfactory to the Collateral Agent, with respect to any Deposit Account, upon consent of the issuer with respect to Letter of Credit Rights, and to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Patents, Trademarks and Copyrights in the applicable intellectual property registries, including but not limited to the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted to the Collateral Agent hereunder constitute valid and perfected First Priority or Second Priority Liens (in accordance with the Intercreditor Agreement (subject in the case of priority only to Permitted Liens and to the rights of the United States government (including any agency or department thereof) with respect to United States government Receivables) on all of the Collateral;

(vi) other than the financing statements filed in favor of the Collateral Agent, no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (A) financing statements for which proper termination statements have been delivered to the Collateral Agent for filing, (B) financing statements in favor of the ABL Collateral Agent and (C) financing statements filed in connection with other Permitted Liens, and other than the filings in favor of the Collateral Agent and the ABL Collateral Agent, 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;

(vii) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (A) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Agent hereunder or (B) the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (1) for the filings contemplated by clause (vii) above and (2) as may be required, in connection with the disposition of any Investment Related Property, by laws generally affecting the offering and sale of Securities;

(viii) all information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects;

(ix) none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC); and

(x) it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral,

except the Lien of the ABL Collateral Agent and other Permitted Liens, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein;

(ii) it shall not change such Grantor's name, identity, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise), sole place of business (or principal residence if such Grantor is a natural person), chief executive office, type of organization or jurisdiction of organization unless it shall have (A) contemporaneously therewith notified the Collateral Agent in writing, by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, and (B) taken all actions necessary or advisable to maintain the continuous validity, perfection and the priority of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby;

(iii) upon such Grantor or any officer of such Grantor obtaining knowledge thereof, it shall promptly notify the Collateral Agent in writing of any event that has had or reasonably could be expected to materially and adversely affect the value of the Collateral or any significant portion thereof, the ability of any Grantor or the Collateral Agent to dispose of the Collateral or any portion thereof, or the rights and remedies of the Collateral Agent in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any significant portion thereof that if left unbonded or not removed would result in an Event of Default;

(iv) it shall not take or permit any action which could impair the Collateral Agent's rights in the Collateral in any material respect; and

(v) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except as permitted by, and in accordance with the Credit Agreement and the ABL Credit Agreement.

4.2 Equipment and Inventory.

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on each Credit Date, that:

(i) all of the Equipment and Inventory (other than de minimis amounts of Equipment and Inventory not located in such locations in the ordinary course of business, Equipment and Inventory in transit between locations identified on Schedule 4.2 and Inventory in transit to Account Debtors) included in the Collateral is kept for the past four (4) years only at the locations specified in Schedule 4.2 (as such schedule may be amended or supplemented from time to time); and

(ii) subject to the provisions of Section 4.2(b)(iii), none of the Inventory or Equipment is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the UCC) therefor or otherwise in the possession of a bailee or a warehouseman.

(b) Covenants and Agreements. Each Grantor covenants and agrees that:

(i) it shall keep the Equipment, Inventory (other than de minimis amounts of Equipment and Inventory not located in such locations in the

ordinary course of business, Equipment and Inventory in transit between locations identified on Schedule 4.2 and Inventory in transit to Account Debtors) and any Documents evidencing any Equipment and Inventory in the locations specified on Schedule 4.2 (as such schedule may be amended or supplemented from time to time) unless it shall have notified the Collateral Agent in writing, by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, contemporaneously with any change in locations, identifying such new locations and providing such other information in connection therewith as the Collateral Agent may reasonably request;

(ii) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Collateral Agent or the purchaser of such Equipment or Inventory;

(iii) if any Equipment or Inventory with a fair market value of greater than \$150,000 in the aggregate is in the possession or under the control of any third party, each Grantor shall join with the Collateral Agent in notifying the third party of the Collateral Agent's security interest and obtaining an acknowledgment from the third party that it is holding the Equipment and Inventory for the benefit of the Collateral Agent; provided, however, that following the occurrence and during the continuance of an Event of Default, each Grantor shall comply with this provision with respect to all Equipment and Inventory; and

(iv) with respect to any item of Equipment which is covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, upon the reasonable request of the Collateral Agent, (A) provide information with respect to any such Equipment in excess of \$40,000 individually or \$150,000 in the aggregate, (B) execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication of the security interest created hereunder on such certificate of title, and (C) deliver to the Collateral Agent copies of all such applications or other documents filed during such calendar quarter and copies of all such certificates of title issued during such calendar quarter indicating the security interest created hereunder in the items of Equipment covered thereby.

4.3 Receivables.

(a) Covenants and Agreements: Each Grantor hereby covenants and agrees that:

(i) it shall keep and maintain at its own cost and expense satisfactory and complete records of the Receivables, including, but not limited to, the originals of all documentation with respect to all Receivables and records of all payments received and all credits granted on the Receivables, all merchandise returned and all other dealings therewith;

(ii) it shall perform in all material respects all of its obligations with respect to the Receivables;

(iii) it shall not amend, modify, terminate or waive any provision of any material Receivable in any manner which could reasonably be expected to materially and adversely affect the value of such Receivable as Collateral other than, prior to the occurrence and during the continuance of an Event of Default, in the ordinary course of business as generally conducted by such Grantor. Following an Event of Default, other than in the ordinary course of business as generally conducted by it and except as otherwise provided in subsection (iv) below, such Grantor shall not (A) grant any extension or renewal of the time of payment of any Receivable, (B) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (C) release, wholly or partially, any Person liable for the payment thereof, or (D) allow any credit or discount thereon; and

(iv) each Grantor shall continue to collect all amounts due or to become due to such Grantor under the Receivables and any Supporting Obligation and diligently exercise each material right it may have under any Receivable any Supporting Obligation or Collateral Support, in each case, at its own expense and consistent with such Grantor's reasonable business practice. Notwithstanding the foregoing, the Collateral Agent shall have the right at any time to require any Grantor to notify any Account Debtor of the Collateral Agent's security interest in the Receivables and any Supporting Obligation (and prior to the occurrence and continuance of an Event of Default, such notification may be on a "no name" basis) and, in addition, at any time following the occurrence and during the continuation of an Event of Default, the Collateral Agent may: (A) notify and direct, or require any Grantor to notify and direct, the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent; (B) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent; and (C) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Collateral Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in a collateral account maintained under the sole dominion and control of the Collateral Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon.

4.4 Investment Related Property.

4.4.1 Investment Related Property Generally

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) within 10 Business Days after the end of each calendar month, in the event it acquires rights in any Investment Related Property after the date hereof, it shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, reflecting such new Investment Related Property and all other Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Collateral Agent shall attach to all Investment Related Property immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a supplement to Schedule 4.4 as required hereby;

(ii) except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Investment Related Property, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property, then (A) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (B) such Grantor shall immediately take all steps, if any, necessary or advisable to ensure the validity, perfection, priority and, if applicable, control, except, with respect to control, as otherwise permitted under Sections 4.4.1(b) or 4.4.4(c)(i) below, of the Collateral Agent over such Investment Related Property (including, without limitation, delivery thereof to the Collateral Agent) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Collateral Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Collateral Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the issuer and consistent with the past practice of the issuer and all scheduled payments of interest; and

(iii) each Grantor consents to the grant by each other Grantor of a Security Interest in all Investment Related Property to the Collateral Agent.

(b) Delivery and Control. Each Grantor agrees that with respect to any Investment Related Property in which it currently has rights it shall comply with the provisions of this Section 4.4.1(b) on or before the Credit Date and with respect to any Investment Related Property hereafter acquired by such Grantor it shall comply with the provisions of this Section 4.4.1(b) promptly upon acquiring rights therein, in each case in form and substance satisfactory to the Collateral Agent. With respect to any Investment Related Property that is represented by a certificate or that is an "instrument" (other than any Investment Related Property (i) credited to a Securities Account or (ii) which is represented by a certificate or "instrument" and does not exceed \$50,000 individually and \$200,000 in the aggregate) it shall cause such certificate or instrument to be delivered to the Collateral Agent, indorsed in blank by an "effective indorsement" (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a "certificated security" for purposes of the UCC; provided, however, that following the occurrence and during the continuance of an Event of Default, it shall cause all such certificates or instruments to be delivered to the Collateral Agent. For the avoidance of doubt, the Grantor shall comply with Section 4.4.1(a)(i) regardless of any exception set forth in this Section 4.4.1(b). With respect to any Investment Related Property that is an "uncertificated security" for purposes of the UCC (other than any "uncertificated securities" credited to a Securities Account), it shall cause the issuer of such uncertificated security to either (A) register the Collateral Agent

as the registered owner thereof on the books and records of the issuer or (B) execute an agreement substantially in the form of Exhibit B hereto, pursuant to which such issuer agrees to comply with the Collateral Agent's instructions with respect to such uncertificated security without further consent by such Grantor.

(c) Voting and Distributions.

(i) So long as no Event of Default shall have occurred and be continuing:

(A) except as otherwise provided under the covenants and agreements relating to Investment Related Property in this Agreement or elsewhere herein or in the Credit Agreement, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Credit Agreement; provided, no Grantor shall exercise or refrain from exercising any such right if the Collateral Agent shall have notified such Grantor that, in the Collateral Agent's reasonable judgment, such action would materially and adversely affect the value of the Investment Related Property or any part thereof; it being understood, however, that neither the voting by such Grantor of any Pledged Stock for, or such Grantor's consent to, the election of directors (or similar governing body) at a regularly scheduled annual or other meeting of stockholders or with respect to incidental matters at any such meeting, nor such Grantor's consent to or approval of any action otherwise permitted under this Agreement and the Credit Agreement, shall be deemed inconsistent with the terms of this Agreement or the Credit Agreement within the meaning of this Section 4.4(c)(i)(A); and

(B) the Collateral Agent shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies, and other instruments as such Grantor may from time to time reasonably request for the purpose of enabling such Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (A) above;

(ii) Upon the occurrence and during the continuation of an Event of Default and (except with regard to an Event of Default pursuant to Section 8.1(f) or 8.1(g) of the Credit Agreement) if the Collateral Agent has given written notice to the Grantor of its election to exercise its rights under this Agreement:

(A) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; and

(B) in order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant

hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (2) each Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth in Section 6.1.

4.4.2 Pledged Equity Interests

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) Schedule 4.4(A) (as such schedule may be amended or supplemented from time to time) sets forth under the headings "Pledged Stock," "Pledged LLC Interests," "Pledged Partnership Interests" and "Pledged Trust Interests," respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule;

(ii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens, rights or claims of other Persons other than the lien of the Collateral Agent and the ABL Collateral Agent and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(iii) without limiting the generality of Section 4.1(a)(vii), no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or desirable in connection with the creation, perfection or First Priority or Second Priority status, in accordance with the Intercreditor Agreement, of the security interest of the Collateral Agent in any Pledged Equity Interests or the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof;

(iv) none of the Pledged LLC Interests nor Pledged Partnership Interests are or represent interests in issuers that: (A) are registered as investment companies or (B) are dealt in or traded on securities exchanges or markets; and

(v) all of the Pledged LLC Interests and Pledged Partnership Interests are or represent interests in issuers that have opted to be treated as securities under the uniform commercial code of any jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) it shall comply in all material respects with all of its obligations under any partnership agreement or limited liability company agreement relating to Pledged Partnership Interests or Pledged LLC Interests and shall, except prior to the occurrence and during the continuance of an Event of Default, to the extent the relevant Grantor in the exercise of its reasonable business judgment otherwise elects, enforce all of its rights with respect to any Investment Related Property; and

(ii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property to the Collateral Agent and, without limiting the foregoing, consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Collateral Agent or its nominee following an Event of Default and to the substitution of the Collateral Agent or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

4.4.3 Pledged Debt

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and each Credit Date, that Schedule 4.4 (as such schedule may be amended or supplemented from time to time in accordance with the terms set forth herein) sets forth under the heading "Pledged Debt" all of the Pledged Debt owned by any Grantor and, to the knowledge of such Grantor, all of such Pledged Debt has been duly authorized, authenticated or issued, and delivered and, to such Grantor's knowledge, is the legal, valid and binding obligation of the issuers thereof and is not in default (other than with respect to issuers that are not Affiliates of any Grantor) and constitutes all of the issued and outstanding inter-company Indebtedness;

4.4.4 Investment Accounts

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and each Credit Date, that:

(i) Schedule 4.4 hereto (as such schedule may be amended or supplemented from time to time) sets forth under the headings “Securities Accounts” and “Commodities Accounts,” respectively, all of the Securities Accounts and Commodities Accounts in which each Grantor has an interest. Each Grantor is the sole entitlement holder of each such Securities Account and Commodity Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the ABL Collateral Agent) having “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or securities or other property credited thereto;

(ii) Schedule 4.4 hereto (as such schedule may be amended or supplemented from time to time) sets forth under the headings “Deposit Accounts” all of the Deposit Accounts in which each Grantor has an interest. Each Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the ABL Collateral Agent) having either sole dominion and control (within the meaning of common law) or “control” (within the meanings of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(iii) Except as otherwise permitted in Section 4.4.4(c) or as otherwise consented to by the Collateral Agent, each Grantor has taken all actions necessary or desirable, including those specified in Section 4.4.4(c), to: (A) establish Collateral Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodities Accounts (each as defined in the UCC); (B) establish the Collateral Agent’s “control” (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts; and (C) deliver all Instruments, except as otherwise permitted by Section 4.4.1(b), to the Collateral Agent.

(b) Covenant and Agreement. Each Grantor hereby covenants and agrees with the Collateral Agent and each other Secured Party that it shall not close or terminate any Investment Account unless a successor or replacement account has been established with the consent of the Collateral Agent with respect to which successor or replacement account a control agreement has been entered into by the appropriate Grantor, Collateral Agent and securities intermediary or depository institution at which such successor or replacement account is to be maintained in accordance with the provisions of Section 4.4.4(c) (and except as otherwise provided in Section 4.4.4(c)).

(c) Delivery and Control

(i) With respect to any Investment Related Property consisting of Securities Accounts or Securities Entitlements, except for Securities Accounts or Securities Entitlements which do not exceed \$100,000 in the aggregate (such amount inclusive of any amounts held in any Deposit Accounts that are not subject to control agreements), it shall cause the securities intermediary maintaining such Securities Account or Securities Entitlement to enter into an agreement, in form and substance satisfactory to the Collateral Agent, pursuant to which it shall agree to comply with the Collateral Agent’s “entitlement orders” without further consent by such Grantor. With respect to any Investment Related Property that is a “Deposit Account,” except for Deposit Accounts which do not exceed \$100,000 in the aggregate (such amount inclusive of any amounts held in any Securities Accounts that are not subject to control agreements), it shall cause the depository institution maintaining such account to enter into an agreement, in form and substance satisfactory to the Collateral Agent, pursuant to which the Collateral Agent shall have both sole dominion and control over such Deposit Account (within the meaning of the common law) and “control” (within the meaning of Section 9-104 of the UCC) over such Deposit Account. Each Grantor shall have entered into such control agreement or agreements with respect to: (A) any Securities Accounts, Securities Entitlements or Deposit Accounts that exist on the Credit Date, as of or prior to the Credit Date, and (B) any Securities Accounts, Securities Entitlements or Deposit Accounts that are created or acquired after the Credit Date, as of or prior to the deposit or transfer of any such Securities Entitlements or funds, whether constituting moneys or investments, into such Securities Accounts or Deposit Accounts; except that with respect to any (A) Securities Accounts or Securities Entitlements that exist on the Closing Date, such Grantor shall have entered into such control agreements no later than sixty (60) days after such Closing Date and (B) Deposit Accounts that exist on the Closing Date, such Grantor shall have entered into such control agreements no later than the Closing Date; and

(ii) in addition to the foregoing, if any issuer of any Investment Related Property is located in a jurisdiction outside of the United States, each Grantor shall take such additional actions, including, without limitation, causing the issuer to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary or advisable, under the laws of such issuer’s jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Agent. Upon the occurrence of an Event of Default, the Collateral Agent shall have the right, without notice to any Grantor, to transfer all or any portion of the Investment Related Property to its name or the name of its nominee or agent. In addition, upon the occurrence and during the continuation of an Event of Default, the Collateral Agent shall have the right at any time, without notice to any Grantor, to exchange any certificates or instruments representing any Investment Related Property for certificates or instruments of smaller or larger denominations.

4.5 Intellectual Property.

(a) Representations and Warranties. Except as disclosed in Schedule 4.5(H) (as such schedule may be amended or supplemented from time to time), each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) Schedule 4.5 (as such schedule may be amended or supplemented from time to time) sets forth a true and complete list of (A) all United States, state and foreign registrations of and applications for Patents, Trademarks (including all Internet domain names), and Copyrights owned by each Grantor and (B) all Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses material to the business of such Grantor;

(ii) it is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed on Schedule 4.5 (as such schedule may be amended or supplemented from time to time), and owns or has the valid right to use all other material Intellectual Property used in or necessary to conduct its business, and all Intellectual Property Collateral is free and clear of all Liens, claims, encumbrances and licenses, except for Permitted Liens and the licenses set forth on Schedule 4.5(B), (D), (F) and (G) (as each may be amended or supplemented from time to time);

(iii) all Intellectual Property Collateral listed on Schedule 4.5 and all other Intellectual Property Collateral that is material to the conduct of such Grantor’s business, is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and each Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every registration and application of Copyrights, Patents and Trademarks listed on Schedule 4.5 in full force and effect;

(iv) all registrations for Intellectual Property Collateral and all other Intellectual Property Collateral that is material to the Grantor’s business is valid and enforceable (except as set forth in Section 4.5(b)(i)); no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of, such Grantor’s right to register, or such Grantor’s rights to own or use, any such material Intellectual Property Collateral and no such action or proceeding is pending or, to the best of such Grantor’s knowledge, threatened, except for such actions or proceedings that could not reasonably be expected to have a Material Adverse Effect;

(v) all registrations and applications for Copyright Collateral, Patent Collateral and Trademark Collateral are standing in the name of each Grantor, and none of the Trademark Collateral, Patent Collateral, Copyright Collateral or Trade Secret Collateral has been licensed by any Grantor to any Affiliate or third party, except as disclosed in Schedule 4.5(B), (D), (F), or (G) (as each may be amended or supplemented from time to time) and pursuant to non-exclusive licenses entered into in the ordinary course of business;

(vi) each Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights that are, in each case, material to the business of such Grantor;

(vii) each Grantor maintains standards of quality in the manufacture, distribution, and sale of all products sold, and in the provision of all services rendered, under or in connection with all Trademark Collateral that is material to the business of such Grantor and has taken all action necessary to insure that all licensees of the Trademark Collateral owned by such Grantor maintains such standards of quality adequate at minimum to prevent any of the Trademark Collateral from becoming invalid or unenforceable;

(viii) the conduct of the business of Grantor as currently conducted 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; no claim is pending or threatened that the use of any Intellectual Property owned or used by Grantor (or any of its respective licensees) violates the rights of any third party, except for claims that could not reasonably be expected to have a Material Adverse Effect;

(ix) to the best of each Grantor's knowledge, no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by such Grantor, where such infringement or violation could reasonably be expected to have a Material Adverse Effect; and

(x) no settlements or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by any Grantor or to which any Grantor is bound that materially and adversely affects any Grantor's rights to own or use any Intellectual Property that is material to the business of such Grantor.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) it shall not do any act or omit to do any act whereby any of the Intellectual Property which is material to the business of any Grantor may lapse, or become abandoned, dedicated to the public or unenforceable, or which would adversely affect the validity, grant or enforceability of the security interest granted therein;

(ii) it shall not, with respect to any Trademarks which are material to the business of any Grantor, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such

Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and each Grantor shall use commercially reasonable efforts to insure that licensees of such Trademarks use such consistent standards of quality;

(iii) it shall not apply to register any Copyright in the United States Copyright Office without the prior written notice to the Collateral Agent, and the provision of details sufficient for the Collateral Agent to record its security interest in the United States Copyright Office;

(iv) it shall promptly notify the Collateral Agent if it knows or has reason to know that any item of the Intellectual Property that is material to the business of any Grantor may become (A) abandoned or dedicated to the public or placed in the public domain, (B) invalid or unenforceable, or (C) subject to any adverse determination or development (including the institution of proceedings) in any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court;

(v) it shall take all reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue all applications and maintain all registrations of each Trademark, Patent, and Copyright owned by any Grantor and material to its business which is now or shall become included in the Intellectual Property Collateral;

(vi) in the event that any Intellectual Property owned by or exclusively licensed to any Grantor is infringed, misappropriated, or diluted by a third party, such Grantor shall promptly take all actions such Grantor determines is necessary or advisable in its reasonable business judgment to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(vii) it shall within ten (10) Business days after the end of each Fiscal Quarter report to the Collateral Agent (A) the filing of any application to register any Intellectual Property Collateral with the United States Patent and Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by such Grantor or through any agent, employee, licensee, or designee thereof during such Fiscal Quarter), and (B) the registration of any Intellectual Property Collateral by any such office, in each case by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto;

(viii) it shall, promptly upon the reasonable request of the Collateral Agent, execute and deliver to the Collateral Agent any document required to acknowledge, confirm, register, record, or perfect the Collateral Agent's interest in any and all parts of the Intellectual Property Collateral, whether now owned or hereafter acquired;

(ix) except with the prior written consent of the Collateral Agent or as permitted under the Credit Agreement or the ABL Credit Agreement, each Grantor (i) shall not execute, and there will not be any filings with respect to a Lien on file in any public office, any financing statement or other document or instruments, except financing statements or other documents or instruments filed or to be filed in favor of the Collateral Agent or in connection with any other Permitted Lien and (ii) shall not sell, assign, transfer, grant any option, or create or suffer to exist any Lien upon or with respect to the Intellectual Property Collateral, except for the Lien created by and under this Agreement, the ABL Security Agreement or the other Credit Documents;

(x) it shall hereafter use commercially reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could reasonably be expected to materially impair or prevent the creation of a security interest in, or the assignment of, such Grantor's rights and interests in any Intellectual Property acquired under such contracts, except for non-exclusive licenses entered into in the ordinary course of business which restrict only the assignment of such license;

(xi) it shall take all steps reasonably necessary to protect the secrecy of all Trade Secrets, including, without limitation, entering into confidentiality agreements with employees and labeling and restricting access to confidential information and documents; and

(xii) it shall use proper statutory notice in connection with its use of any of the Intellectual Property that is material to its business.

4.6 Commercial Tort Claims.

(a) **Representations and Warranties.** Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that Schedule 4.6 (as such schedule may be amended or supplemented from time to time) sets forth all known Commercial Tort Claims of each Grantor in excess of \$250,000 individually or \$500,000 in the aggregate; and

(b) **Covenants and Agreements.** Each Grantor hereby covenants and agrees that with respect to any known Commercial Tort Claim in excess of \$250,000 individually or \$500,000 in the aggregate hereafter arising it shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

SECTION 5. FURTHER ASSURANCES; ADDITIONAL GRANTORS.

5.1 Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Collateral Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Intellectual Property with any intellectual property registry in which said Intellectual Property is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing;

(iii) at any reasonable time, upon request by the Collateral Agent, allow inspection of the Collateral by the Collateral Agent, or persons designated by the Collateral Agent; and

(iv) at the Collateral Agent's request, appear in and defend any action or proceeding that may affect such Grantor's title to or the Collateral Agent's security interest in all or any part of the Collateral.

(b) Each Grantor hereby authorizes the Collateral Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Collateral Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Collateral Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail.

(c) Each Grantor hereby authorizes the Collateral Agent to modify this Agreement after obtaining such Grantor's approval of or signature to such modification by amending Schedule 4.5 (as such schedule may be amended or supplemented from time to time) to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by any Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which any Grantor no longer has or claims any right, title or interest.

5.2 Additional Grantors. From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "Additional Grantor"), by executing a Pledge Supplement in the form attached hereto as Exhibit A and a Counterpart Agreement in accordance with the Credit Agreement. Upon delivery of any such Pledge Supplement to the Collateral Agent, notice of which is hereby waived by Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising

hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Collateral Agent not to cause any Subsidiary of Company to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.

6.1 Power of Attorney. Each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument that the Collateral Agent may deem reasonably necessary or advisable to allow the Collateral Agent to undertake any action required to be undertaken by any Grantor hereunder and not so undertaken, and otherwise to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by such Grantor or paid to the Collateral Agent pursuant to the Credit Agreement;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor;

(g) upon the occurrence and during the continuance of any Event of Default, to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge Taxes and all penalties and interest related thereto or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand; and

(h) upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at the Collateral Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that the Collateral Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

6.2 No Duty on the Part of Collateral Agent or Secured Parties The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 7. REMEDIES.

7.1 Generally.

(a) If any Event of Default shall have occurred and be continuing, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Collateral Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

(b) The Collateral Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent to the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Collateral Agent, as collateral agent for and representative of the Secured Parties, 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 sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantors shall be liable for the deficiency and the fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities or that relate to non-waivable provisions of applicable law. Nothing in this Section shall in any way alter the rights of the Collateral Agent hereunder.

(c) The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Collateral Agent shall have no obligation to marshal any of the Collateral.

7.2 Application of Proceeds. Except as provided in the Intercreditor Agreement, all proceeds received by the Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by the Collateral Agent against, the Secured Obligations in the

following order of priority: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable

compensation to the Collateral Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith, and all amounts for which the Collateral Agent is entitled to indemnification hereunder (in its capacity as the Collateral Agent and not as a Lender) and all advances made by the Collateral Agent hereunder for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by the Collateral Agent in connection with the exercise of any right or remedy hereunder or under the Credit Agreement, all in accordance with the terms hereof or thereof; second, to pay interest on and then principal of any portion of the Term Loans that Administrative Agent may have advance on behalf of any Lender for which Administrative Agent has not then been reimbursed by such Lender or Company; third, to the extent of any excess of such proceeds, to the payment of all other Secured Obligations for the ratable benefit of the Lenders; and fourth, to the extent of any excess of such proceeds, to the payment to or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

7.3 Sales on Credit. If Collateral Agent sells any of the Collateral on credit, the Secured Obligations will be credited only with payments actually made by purchaser and received by Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Collateral Agent may resell the Collateral and the Secured Obligations shall be credited with proceeds of the sale.

7.4 Deposit Accounts.

If any Event of Default shall have occurred and be continuing, the Collateral Agent may apply the balance from any Deposit Account or instruct the bank at which any Deposit Account is maintained to pay the balance of any Deposit Account to or for the benefit of the Collateral Agent.

7.5 Investment Related Property.

Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions

under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

7.6 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(i) the Collateral Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, in the Collateral Agent's sole discretion, to enforce any Intellectual Property Collateral, in which event such Grantor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify the Collateral Agent as provided in Section 10 hereof in connection with the exercise of its rights under this Section, and, to the extent that the Collateral Agent shall elect not to bring suit to enforce any Intellectual Property Collateral as provided in this Section, each Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of such Grantor's rights in the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing as shall be necessary to prevent such infringement or violation to the extent required under Section 4.5(b);

(ii) upon written demand from the Collateral Agent, each Grantor shall grant to the Collateral Agent any licenses, assignments or rights in any of such Grantor's right, title and interest in and to any Intellectual Property Collateral and shall execute and deliver to the Collateral Agent such documents as are necessary or appropriate for the Grantor or the Collateral Agent to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor prior to such Event of Default;

(iii) within five (5) Business Days after written notice from the Collateral Agent, each Grantor shall use reasonable best efforts to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor under or in connection with the Trademarks and Trademark Licenses; and

(iv) the Collateral Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property Collateral, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done; including

(1) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to such Grantor in respect of the Intellectual Property Collateral or any portion thereof shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Collateral Agent in

the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.7 hereof; and

(2) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing,

(ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Collateral Agent of any rights, title and interests in and to the Intellectual Property Collateral shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Collateral Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by the Collateral Agent; provided, after giving effect to such reassignment, the Collateral Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Agent granted hereunder, shall continue to be in full force and effect; and provided further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Collateral Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 7 and at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, to the extent it has the right to do so, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located.

7.7 Cash Proceeds. In addition to the rights of the Collateral Agent specified in Section 4.3 with respect to payments of Receivables, upon the occurrence and during the continuation of an Event of Default and (except with regard to an Event of Default pursuant to Section 8.1(f) or 8.1(g) of the Credit Agreement) notice from the Collateral Agent of its intent to exercise its rights under this Section 7.7, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other non-cash items (collectively, "**Cash Proceeds**") shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, unless otherwise provided pursuant to Section 4.4(a)(ii), be turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required) and held by the Collateral Agent in the Collateral Account. Any Cash Proceeds received by the Collateral Agent (whether from a Grantor or otherwise): if an Event of Default shall have occurred and be continuing, may, in the sole discretion of the Collateral Agent, (A) be held by the Collateral Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter shall be applied by the Collateral Agent against the Secured Obligations in accordance with the terms hereof (except as otherwise provided in the Intercreditor Agreement).

SECTION 8. COLLATERAL AGENT.

The Collateral Agent has been appointed to act as Collateral Agent hereunder by Lenders and, by their acceptance of the benefits hereof, the other Secured Parties. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement, the Intercreditor Agreement and the Credit Agreement. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of Secured Parties in accordance with the terms of this Section and the Intercreditor Agreement. Collateral Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and the Grantors. Upon any such notice of resignation, Requisite Lenders shall have the right, upon five (5) Business Days' notice to the Collateral Agent, to appoint a successor Collateral 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 Collateral Agent gives notice of its resignation, then the resigning Collateral Agent may, on behalf of the Secured Parties, appoint a successor Collateral Agent. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall be deemed the Collateral Agent under this Agreement. Upon the acceptance of any appointment as Administrative Agent under the terms of the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent shall thereby also be deemed the successor Collateral Agent and such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement, and (ii) execute and deliver to such successor Collateral 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 Collateral Agent of the security interests created hereunder, whereupon such retiring Collateral Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Agreement and the Credit Agreement (including Section 9 thereof) shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder.

Grantors jointly and severally agree to indemnify the Collateral Agent and the other Secured Parties from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from the Collateral Agent's or Secured Party's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. The obligations of Grantors in this Section 8 shall survive the termination of this Agreement and the discharge of the Secured Obligations.

SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations and the

cancellation or termination of the Commitments, be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Secured Obligations and the cancellation or termination of the Commitments, the security interest granted hereby shall terminate hereunder and of record and all rights to the Collateral shall revert to Grantors. Upon any such termination the Collateral Agent shall, at Grantors' expense, execute and deliver to Grantors such documents as Grantors shall reasonably request to evidence such termination. In addition, the Collateral Agent shall, at Grantors' expense, execute and deliver to Grantors any documents or instruments necessary to release any Lien in accordance with Section 9.8 of the Credit Agreement encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted under the Credit Agreement.

SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM.

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under

SECTION 11. MISCELLANEOUS.

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 10.1 of the Credit Agreement. No failure or delay on the part of the Collateral Agent 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. All rights, powers and remedies existing under this Agreement and the other Credit Documents 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 Document. 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. In case any provision in or obligation under this 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. 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. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Collateral Agent given in accordance with the Credit Agreement, assign any right, duty or obligation hereunder. This Agreement, the Intercreditor Agreement and the other Credit Documents embody the entire agreement and understanding between Grantors and the Collateral Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. This Agreement may be executed in one or more 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.

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 ITS CONFLICTS OF LAW PRINCIPLES THEREOF.

[Signatures follow on next page]

IN WITNESS WHEREOF, each Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

DOUGLAS DYNAMICS HOLDINGS, INC.

By: _____
Name:
Title:

DOUGLAS DYNAMICS, L.L.C.

By: _____
Name:
Title:

DOUGLAS DYNAMICS FINANCE COMPANY

By: _____
Name:
Title:

FISHER, LLC,

By: _____
Name:
Title:

[Signature Page to Term Pledge and Security Agreement]

CREDIT SUISSE, CAYMAN ISLANDS BRANCH,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[Signature Page to Term Pledge and Security Agreement]

SCHEDULE 4.1
TO PLEDGE AND SECURITY AGREEMENT

GENERAL INFORMATION

(A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person) and Organizational Identification Number of each Grantor:

Full Legal Name	Type of Organization	Jurisdiction of Organization	Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person)	Organization I.D.#

(B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

Full Legal Name	Trade Name or Fictitious Business Name

(C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business (or Principal Residence if Grantor is a Natural Person) and Corporate Structure within past five (5) years:

Name of Grantor	Date of Change	Description of Change

(D) Agreements pursuant to which any Grantor is found as debtor within past five (5) years:

Name of Grantor	Description of Agreement

(E) Financing Statements:

Name of Grantor	Filing Jurisdiction(s)

SCHEDULE 4.2
TO PLEDGE AND SECURITY AGREEMENT

Name of Grantor	Location of Equipment and Inventory

SCHEDULE 4.4
TO PLEDGE AND SECURITY AGREEMENT

INVESTMENT RELATED PROPERTY

(A) Pledged Stock:

Grantor	Stock Issuer	Class of Stock	Certificated (Y/N)	Stock Certificate No.	Par Value	No. of Pledged Stock	% of Outstanding Stock of the Stock Issuer

Pledged LLC Interests:

Grantor	Limited Liability Company	Certificated (Y/N)	Certificate No. (if any)	No. of Pledged Units	% of Outstanding LLC Interests of the Limited Liability Company

Pledged Partnership Interests:

Grantor	Partnership	Type of Partnership Interests (e.g., general or limited)	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Partnership Interests of the Partnership

Pledged Trust Interests:

Grantor	Trust	Class of Trust Interests	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Trust Interests of the Trust

Pledged Debt:

Grantor	Issuer	Original Principal Amount	Outstanding Principal Balance	Issue Date	Maturity Date

Securities Account:

Grantor	Share of Securities Intermediary	Account Number	Account Name

Commodities Accounts:

Grantor	Name of Commodities Intermediary	Account Number	Account Name

Deposit Accounts:

Grantor	Name of Depository Bank	Account Number	Account Name

(B)

Name of Grantor	Date of Acquisition	Description of Acquisition

INTELLECTUAL PROPERTY

- (A) Copyrights
- (B) Copyright Licenses
- (C) Patents
- (D) Patent Licenses
- (E) Trademarks
- (F) Trademark Licenses
- (G) Trade Secret Licenses
- (H) Intellectual Property Exceptions

SCHEDULE 4.6
TO PLEDGE AND SECURITY AGREEMENT

COMMERCIAL TORT CLAIMS

- Douglas Dynamics Holdings, Inc.
- Douglas Dynamics, L.L.C.
- Douglas Dynamics Finance Company
- Fisher, LLC

EXHIBIT A
TO PLEDGE AND SECURITY AGREEMENT

PLEDGE SUPPLEMENT

This **PLEDGE SUPPLEMENT**, dated [mm/dd/yy], is delivered by [NAME OF GRANTOR] a [NAME OF STATE OF ORGANIZATION] [Corporation] (the “Grantor”) pursuant to the Term Pledge and Security Agreement, dated as of May 21, 2007 (as it may be from time to time amended, restated, modified or supplemented, the “Security Agreement”), 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 and Douglas Dynamics Finance Company, the other Grantors named therein, and Credit Suisse, Cayman Islands Branch, as the Collateral Agent. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Grantor hereby confirms the grant to the Collateral Agent set forth in the Security Agreement of, and does hereby grant to the Collateral Agent, a security interest in all of Grantor’s right, title and interest in and to all Collateral to secure the Secured Obligations, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located. Grantor represents and warrants that the attached Supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such Supplements to Schedules shall constitute part of the Schedules to the Security Agreement, and agrees to be bound by all of the provisions of the Security Agreement applicable to any “Grantor”.

IN WITNESS WHEREOF, Grantor has caused this Pledge Supplement to be duly executed and delivered by its duly authorized officer as of [mm/dd/yy].

[NAME OF GRANTOR]

By: _____
Name:
Title:

SUPPLEMENT TO SCHEDULE 4.1
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

- (A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person) and Organizational Identification Number of each Grantor:

Full Legal Name	Type of Organization	Jurisdiction of Organization	Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person)	Organization I.D.#

(B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

Full Legal Name	Trade Name or Fictitious Business Name

(C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business (or Principal Residence if Grantor is a Natural Person) and Corporate Structure within past five (5) years:

Name of Grantor	Date of Change	Description of Change

(D) Agreements pursuant to which any Grantor is found as debtor within past five (5) years:

Name of Grantor	Description of Agreement

2

(E) Financing Statements:

Name of Grantor	Filing Jurisdiction(s)

3

SUPPLEMENT TO SCHEDULE 4.2
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

Name of Grantor	Location of Equipment and Inventory

4

SUPPLEMENT TO SCHEDULE 4.4
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

(A)

Pledged Stock:

Pledged Partnership Interests:

Pledged LLC Interests:

Pledged Trust Interests:

Pledged Debt:

Securities Account:

Commodities Accounts:

Deposit Accounts:

(B)

Name of Grantor	Date of Acquisition	Description of Acquisition

SUPPLEMENT TO SCHEDULE 4.5
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

- (A) Copyrights
- (B) Copyright Licenses
- (C) Patents
- (D) Patent Licenses
- (E) Trademarks
- (F) Trademark Licenses
- (G) Trade Secret Licenses
- (H) Intellectual Property Exceptions

SUPPLEMENT TO SCHEDULE 4.6
TO PLEDGE AND SECURITY AGREEMENT

COMMERCIAL TORT CLAIMS

- Douglas Dynamics Holdings, Inc.
- Douglas Dynamics, L.L.C.
- Douglas Dynamics Finance Company
- Fisher, LLC

EXHIBIT B
TO PLEDGE AND SECURITY AGREEMENT

UNCERTIFICATED SECURITIES CONTROL AGREEMENT

This Uncertificated Securities Control Agreement dated as of _____, 200__ among _____ (the "Pledgor"), Credit Suisse, Cayman Islands Branch, as collateral agent for the Secured Parties (as defined in the Term Pledge and Security Agreement dated as of May 21, 2007, among the Pledgor, the other Grantors party thereto and the Collateral Agent (the "Security Agreement")) and the Secured Parties (as defined in the ABL Pledge and Security Agreement, dated as of May 21, 2007, among the Debtor, the other Grantors party thereto and the Collateral Agent), (the "Collateral Agent") and _____, a _____ corporation (the "Issuer"). Capitalized terms used but not defined herein shall have the meaning assigned in the Security Agreement. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

Section 1. Registered Ownership of Shares. The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of shares of the Issuer's [common] stock (the "Pledged Shares") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Agent or in connection with a disposition permitted by the Credit Agreement.

Section 2. Instructions. If at any time the Issuer shall receive instructions originated by the Collateral Agent relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person.

Section 3. Additional Representations and Warranties of the Issuer. The Issuer hereby represents and warrants to the Collateral Agent:

- (a) It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating the Pledged Shares pursuant to which it has agreed to comply with instructions issued by such other person; and
- (b) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Pledgor or the Collateral Agent purporting to limit or condition the obligation of the Issuer to comply with Instructions as set forth in Section 2 hereof.
- (c) Except for the claims and interest of the Collateral Agent and of the Pledgor in the Pledged Shares, the Issuer does not know of any claim to, or interest in, the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Agent and the Pledgor thereof.
- (d) This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer.

Section 4. Choice of Law. This Agreement shall be governed by the laws of the State of New York.

Section 5. Conflict with Other Agreements. In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

Section 6. Voting Rights. Until such time as the Collateral Agent shall otherwise instruct the Issuer in writing, the Pledgor shall have the right to vote the Pledged Shares.

Section 7. Successors; Assignment. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Collateral Agent may assign its rights hereunder only with the express written consent of the Issuer and by sending written notice of such assignment to the Pledgor.

Section 8. Indemnification of Issuer. The Pledgor and the Collateral Agent hereby agree that (a) the Issuer is released from any and all liabilities to the Pledgor and the Collateral Agent arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's gross negligence or willful misconduct and (b) the Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's gross negligence or willful misconduct, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

Section 9. Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received or two (2) days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Pledgor: [INSERT ADDRESS]
Attention:
Telecopier:

Collateral Agent: [INSERT ADDRESS]
Attention:
Telecopier:

Issuer: [INSERT ADDRESS]
Attention:
Telecopier:

Any party may change its address for notices in the manner set forth above.

Section 10. Termination. The obligations of the Issuer to the Collateral Agent pursuant to this Control Agreement shall continue in effect until the security interests of the Collateral Agent in the Pledged Shares have been terminated pursuant to the terms of the Security Agreement and the Collateral Agent has notified the Issuer of such termination in writing. The

Collateral Agent agrees to provide Notice of Termination in substantially the form of Exhibit A hereto to the Issuer upon the request of the Pledgor on or after the termination of the Collateral Agent's security interest in the Pledged Shares pursuant to the terms of the Security Agreement. The termination of this Control Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

Section 11. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF PLEDGOR]

By: _____
Name:
Title:

[_____]
as Collateral Agent

By: _____
Name:
Title:

[NAME OF ISSUER]

By: _____
Name:
Title:

[Letterhead of Collateral Agent]

[Date]

[Name and Address of Issuer]

Attention:

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement between you, [the Pledgor] and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Control Agreement) from [the Pledgor]. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares, however nothing contained in this notice shall alter any obligations which you may otherwise owe to [the Pledgor] pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of Pledgor].

Very truly yours,

[_____],
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

MORTGAGE

**MORTGAGE, ASSIGNMENT OF LEASES,
RENTS AND PROFITS AND SECURITY AGREEMENT**

DOUGLAS DYNAMICS, L.L.C.

Mortgagor

to

CREDIT SUISSE, CAYMAN ISLANDS BRANCH
in its capacity as Collateral Agent for the Secured Parties
Eleven Madison Avenue
New York, New York 10010

Mortgagee

DATED: As of May 21, 2007

Premises located in:
City of Rockland, County of Knox, State of Maine

Record and Return to:
Skadden Arps Slate Meagher & Flom LLP
300 South Grand Avenue
Los Angeles, California 90071
Attn: Eric Lee, Esq.

INDEX

	<u>Page No.</u>
1. Payment of Obligations and Performance of Covenants and Agreements	6
2. Title to Property	6
3. Intercreditor Agreement	7
4. Future Advances	7
5. Insurance	7
6. Impositions	7
7. Maintenance and Alterations	8
8. Leasing	8
9. Recording, Filing and Other Fees	9
10. Taxes Imposed on Mortgagee and the Secured Parties	9
11. Compliance with Laws, etc.	9
12. Inspection	9
13. Certificate of Mortgagor	9
14. Condemnation	10
15. Restoration	10
16. Default	11
17. Mortgagee's Right to Perform Mortgagor's Covenants	11
18. Contemporaneous Mortgages	11
19. Appointment of Receiver	11
20. Intentionally Deleted	12
21. Judicial Foreclosure	12
22. Sale in Parcels	12
23. Notice Upon Acceleration	13
24. Possession of Premises	13
25. Expenses of Mortgagee and/or the Secured Parties	13
26. Mortgagor's Waivers	13
27. Partial Foreclosure	14
28. No Waiver; Rights Cumulative	14
29. Attorneys' Fees	14
30. Interest After Maturity	15
31. No Credit for Taxes	15
32. Liens	15
33. Change in Taxation	15
34. Assignment of Leases and Rents	16
35. Security Agreement	17
36. No Release	17
37. Notices	18
38. Severability	18
39. Intentionally Deleted	18
40. Indemnification Against Liabilities	18
41. No Oral Changes	19
42. Governing Law	19
<hr/>	
43. Construction	19
44. Headings	19
45. After Acquired Property	19
46. Further Assurances	20
47. Definitions	20
48. Successors and Assigns	20
49. Credit Agreement	20
50. State Specific Provisions	20
Exhibit A Description of the Land	
Exhibit B Existing Liens	

**MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND PROFITS
AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND PROFITS AND SECURITY AGREEMENT(this "**Mortgage**") made as of this 21st day of May, 2007 by **DOUGLAS DYNAMICS, L.L.C.**, a Delaware limited liability company having an office at 7777 North 73^d Street, Milwaukee, Wisconsin 53223 (the "**Mortgagor**"), to **CREDIT SUISSE, CAYMAN ISLANDS BRANCH**, a bank organized under the laws of Switzerland, acting through its Cayman Islands Branch ("**Credit Suisse**"), as collateral agent (in such capacity, and together with its successors and assigns, the "**Mortgage**"), having an office at Eleven Madison Avenue, New York, New York 10010, for the Secured Parties (as such term and other capitalized terms used but not otherwise defined herein are defined in the Credit Agreement, defined below).

WITNESSETH:

WHEREAS, Mortgagor is the owner of the fee interest in those certain parcels of land lying and being situated in the City of Rockland, Knox County, Maine, as more particularly described in Exhibit A attached hereto;

WHEREAS, Mortgagor, as Borrower, Fisher, LLC, a Delaware limited liability company ("**Fisher**"), Douglas Dynamics Finance Company, a Delaware corporation ("**DD Finance**"), and Douglas Dynamics Holdings, Inc., a Delaware corporation ("**Holdings**"), as 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, as sole bookrunner, sole lead arranger, syndication agent, documentation agent, administrative agent for the Lenders ("**Term Administrative Agent**"), and as collateral agent for the Lenders, have entered into 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, the "**Credit Agreement**"), pursuant to which Lenders have agreed to make, and Mortgagee has agreed to administer, certain credit facilities in an aggregate amount not to exceed \$85,000,000, which extensions of credit shall be used for the purposes permitted under the Credit Agreement, upon the terms and conditions contained in the Credit Agreement; and

WHEREAS, Mortgagor has agreed to execute and deliver to Mortgagee this Mortgage in order to secure Mortgagor's performance of Mortgagor's obligations under the Credit Agreement and under any of the other Credit Documents;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, including Mortgagee's entering into the Credit Agreement, the receipt and legal sufficiency of which are hereby expressly acknowledged by all parties, to secure the full and complete payment and performance of the Obligations, including Mortgagor's performance of Mortgagor's obligations pursuant to the Credit Agreement, this Mortgage and the other Credit Documents, Mortgagor and Mortgagee hereby agree as follows:

Mortgagor does hereby grant, pledge, mortgage, warrant, sell, transfer, assign, and convey unto Mortgagee subject only to the Permitted Liens and Existing Liens (defined below), all of its right, title and interest in the following (collectively, the "**Property**"):

- A. All that certain land located in the City of Rockland, Knox County, Maine, and more particularly described in Exhibit A annexed hereto and made a part hereof (collectively, the "**Land**").
- B. All the buildings, structures and improvements, now or at any time hereafter erected on the Land or any part thereof (collectively, the "**Buildings**").
- C. All machinery, apparatus, equipment, personal property and fixtures of every kind and nature whatsoever now or hereafter located in, on or about any one or more of the Buildings or upon the Land, or attached to or used or useable in connection with the operation or maintenance of the Land or any one or more of the Buildings, or any part thereof, and now owned or hereafter acquired (collectively, the "**Building Equipment**"; the Land, the Buildings and the Building Equipment being hereafter sometimes collectively referred to as the "**Premises**").
- D. All right, title and interest of Mortgagor, whether now owned or hereafter acquired, in and to any opened or proposed avenues, streets, roads, public places, sidewalks, alleys, strips or gores of land, in front of or adjoining the Land or any one or more of the Buildings and all easements, tenements, hereditament, appurtenances, rights and rights of way, public or private, pertaining or belonging to the Land or any one or more of the Buildings.
- E. All insurance proceeds and all awards and payments, subject to applicable provisions of this Mortgage, including interest thereon, and the right to receive the same, which may be made in respect of all or any part of any of the Premises or any estate or interest therein or appurtenant thereto, as a result of damage to or destruction of all or any part of any of the Premises, the exercise of the right of condemnation or eminent domain, the closing of, or the alteration of the grade of, any street on or adjoining the Land, or any other injury to or decrease in the value of all or any part of any of the Premises.
- F. All right, title and interest of Mortgagor in and to any and all present and future Leases (as defined in Paragraph 47) of all or any part of the Premises, and in and to the rents, issues and profits payable thereunder and cash or securities deposited thereunder as lessees' security deposits.
- G. All franchises, permits, licenses and rights therein respecting the use, occupation and operation of the Premises or the activities conducted thereon or therein.
- H. All right, title and interest of Mortgagor in and to any minerals, oil or gas located on, under or appurtenant to the Land.
- I. All right, title and interest of Mortgagor in and to any tax refunds with respect to the Premises.

5

J. To the extent assignable, all of Mortgagor's interest in and to all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of the Premises and all right, title and interest of Mortgagor therein (collectively, the "**Contracts**").

K. All of Mortgagor's interest in and to all easements, rights, licenses, privileges and appurtenances including, without limitation, development and air rights now or hereafter belonging or in any way appertaining to the Land.

L. All of the estate and rights of Mortgagor now or hereafter acquired in and to land lying in streets, roads, ways and alleys, open or proposed, adjoining or contiguous to the Land.

M. The rents, issues and profits of any of the foregoing.

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns, forever. Provided, that if (i) Mortgagor shall perform all obligations hereunder and (ii) the Obligations (including, without limitation, certain credit facilities in an aggregate amount not to exceed \$170,000,000, all as further described in the Credit Agreement, and any "Future Advances" and "Contingent Obligations" referred to in Section 50 of this Mortgage) are paid in full, the Commitments are cancelled or terminated and all outstanding Letters of Credit are cancelled or have expired, then this Mortgage shall be released without warranty, at the cost and request of Mortgagor.

AND MORTGAGOR COVENANTS, REPRESENTS AND WARRANTS TO AND FOR THE BENEFIT OF MORTGAGEE AND THE SECURED PARTIES AS FOLLOWS:

1. Payment of Obligations and Performance of Covenants and Agreements Mortgagor shall pay or perform the Obligations when due in accordance with the provisions of the Credit Agreement, this Mortgage, and the other Credit Documents and perform the covenants and agreements of Mortgagor set forth in the Credit Documents.

2. Title to Property Mortgagor represents and warrants that (a) it owns good and marketable fee simple title to the Premises, (b) it has the good and unrestricted right, full power and lawful authority to make this Mortgage in accordance with the terms hereof, (c) Mortgagor has obtained any and all consents and approvals necessary or required for the making of this Mortgage, and the making of this Mortgage will not violate any contract or agreement to which Mortgagor is a party or by which the Property is bound, and (d) the Premises is free of all liens, encumbrances, adverse claims and other defects of title whatsoever except those items listed on Exhibit B annexed hereto and made a part hereof (collectively, the "**Existing Liens**") and Permitted Liens. Mortgagor does hereby and shall forever warrant and defend its

Persons. As of the date hereof, there are no defenses or offsets to this Mortgage or to the Obligations.

3. Intercreditor Agreement Notwithstanding anything herein to the contrary, and regardless of the priority of recordation of this Mortgage, the lien and security interests granted to the Mortgagee pursuant to this Mortgage and the exercise of any right or remedy by such Mortgagee hereunder are subject to the provisions of that certain Intercreditor Agreement, dated as of May 21, 2007 (the "**Intercreditor Agreement**"), by and among Mortgagor, Fisher, DD Finance, Holdings, Mortgagee, Term Administrative Agent, Credit Suisse, in its capacity as administrative agent under the ABL Loan Documents (as defined therein), and JPMorgan Chase Bank, N.A., in its capacity as collateral agent under the ABL Loan Documents (together with its successors and assigns from time to time in such capacity, the "**ABL Collateral Agent**"). In the event of any conflict between the terms of the Intercreditor Agreement and this Mortgage, the terms of the Intercreditor Agreement shall govern.

4. Future Advances Without limiting the generality of any other provision hereof, or the terms and provisions of the Credit Agreement, the Obligations shall include, without limitation: (a) all existing indebtedness of Mortgagor to Mortgagee and/or any of the Secured Parties evidenced by any of the Credit Documents; (b) all future advances that may subsequently be made by Mortgagee and/or the Lenders as provided by any of the Credit Documents; and (c) all other indebtedness, if any, of Mortgagor to Mortgagee and/or any of the Secured Parties now due or to become due or hereafter contracted pursuant to any of the Credit Documents; provided that the maximum principal amount of all existing indebtedness, future advances, readvances of sums repaid and all other indebtedness secured hereby at any one time shall not exceed the total sum of \$170,000,000 (exclusive of interest thereon, attorneys' fees and costs, taxes, insurance premiums and all other obligations hereunder).

5. Insurance

(a) Mortgagor shall maintain in full force and effect with respect to the Premises the insurance as required by Section 5.5 of the Credit Agreement.

(b) In the event of a foreclosure of this Mortgage or other action or proceeding taken by Mortgagee pursuant to this Mortgage, the purchaser of the Premises shall succeed to all of the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance which Mortgagor is required to maintain under Paragraph 5(a) and to all proceeds of such insurance.

6. Impositions

(a) Mortgagor shall pay, not later than the final delinquency date thereof, all real estate taxes, personal property taxes, assessments, water rates and sewer rents, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Land, and any other amounts which could be or become a lien upon or against the

Property or any part thereof (collectively, the "**Impositions**"); provided, no such Imposition 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. Notwithstanding the foregoing, Mortgagor shall promptly, and in any event on demand, pay such contested Imposition if at any time all or any part of the Property shall be in danger of being foreclosed, sold, forfeited, or otherwise lost or if such contest shall be discontinued. During the continuance of any Event of Default, upon demand by Mortgagee, Mortgagor will pay the whole of any assessment (an "**Assessment**") for local improvements which may be payable in installments, notwithstanding that such installments may not be due and payable at the time of such demand.

(b) Mortgagor shall, upon request of Mortgagee, deliver to Mortgagee, within twenty (20) days after the final delinquency date thereof of any Imposition or Assessment, receipts evidencing such payment or other proof of payment satisfactory to Mortgagee.

7. Maintenance and Alterations Mortgagor will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, the Premises and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

8. Leasing Mortgagor represents that there are no Leases now in effect. Mortgagor shall not enter into any Lease of all or any part of any of the Premises without in each instance obtaining Mortgagee's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Mortgagor shall deliver to Mortgagee a duplicate original of each Lease promptly after the execution thereof. At the option of Mortgagee, each Lease, and all renewals, replacements, extensions, and modifications thereof, and all rights of the tenant thereunder, shall be subject and subordinate to this Mortgage, and to each and every advance made or thereafter made hereunder or under the other Credit Documents and to all renewals, additions, amendments, supplements, modifications, consolidations, spreaders, replacements, and extensions of this Mortgage and shall contain provisions obligating the tenants thereunder to atorn to Mortgagee or any purchaser therefrom if Mortgagee or such purchaser succeeds to the interest of Mortgagor under such Lease. Mortgagor shall fully and promptly perform all of the obligations to be performed by the lessor under any and all Leases. Mortgagor shall enforce the performance and observance of each and every obligation to be performed or observed by the lessees under such Leases. Mortgagor shall give prompt notice to Mortgagee of (a) any notice received by Mortgagor of any default by the lessor under any Lease, (b) the commencement of any action or proceeding by any lessee the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable thereunder, (c) any notice of default given by Mortgagor to the lessee under any Lease, or (d) the interposition by any lessee of any defense or counterclaim in any action or proceeding brought by Mortgagor against such lessee; and Mortgagor will cause a copy of any process, pleading or notice received or served by Mortgagor in reference to any such action, defense or claim to be promptly delivered to

Mortgagee. Mortgagor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall not mingle such funds with other funds. Mortgagor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

9. Recording, Filing and Other Fees Mortgagor shall pay all recording and filing fees, all recording taxes, and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of this Mortgage and any other Credit Documents, and shall reimburse Mortgagee and each of the Secured Parties on demand for all costs and expenses of any kind incurred by Mortgagee or any of the Secured Parties in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements). Mortgagor will, at any time on request of Mortgagee, execute or cause to be executed financing statements, continuation statements, or the like, in respect of any Building Equipment. Mortgagor shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

10. Taxes Imposed on Mortgagee and the Secured Parties Mortgagor shall pay all taxes (except income, inheritance and franchise taxes, taxes on the

receipt of debt service payments, or taxes in lieu of any of the foregoing) imposed on Mortgagee or any of the Secured Parties by reason of its ownership of this Mortgage or any of the other Credit Documents.

11. Compliance with Laws, etc. Mortgagee shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

12. Inspection Mortgagee and its authorized representatives shall have the right, at Mortgagee's option, at reasonable times during normal business hours and upon reasonable prior written notice, and as often as may be reasonably requested, to enter the Premises for the purpose of inspecting the same and any other Collateral.

13. Certificate of Mortgagee Mortgagee, upon request of Mortgagee or any of the Secured Parties, shall certify to Mortgagee or to such Secured Party or to any proposed assignee of or participant in this Mortgage, by an instrument in form reasonably satisfactory to Mortgagee or such Secured Party, duly acknowledged, the amount of the Obligations then owing, whether any offsets or defenses exist against payment or performance of all or any portion of the Obligations and anything else that Mortgagee or such Secured Party might reasonably request, within ten (10) days if the request is made personally, or within fifteen (15) days if the request is made by mail. Mortgagee, Secured Parties and any actual or proposed assignee of or participant in this Mortgage shall have the right to rely on such certification.

9

14. Condemnation

(a) Mortgagee shall give notice to Mortgagee upon Mortgagee receiving written notice of the commencement of any action or proceeding to take all or any part of the Premises by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Land. Mortgagee may participate in any such action or proceeding in the name of Mortgagee or, whenever necessary, in the name of Mortgagee, and Mortgagee shall deliver to Mortgagee such instruments as Mortgagee shall request to permit such participation. Mortgagee shall not settle any such action or proceeding or agree to accept any award or payment without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed), and such award or payment and any interest thereon (hereinafter collectively called the "Award") shall be applied in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement.

(b) The application of any Award toward payment of the Obligations shall not be deemed a waiver by Mortgagee or any of the Secured Parties of its right to receive payment of the balance of the Obligations in accordance with the provisions of the Credit Documents. Mortgagee shall have the right, but shall be under no obligation, to question the amount of the Award, and Mortgagee may accept the same without prejudice to the rights that Mortgagee may have to question such amount. In any such condemnation or eminent domain action or proceeding Mortgagee may be represented by attorneys selected by Mortgagee, and all sums paid by Mortgagee in connection with such action or proceeding (including, without limitation, reasonable attorneys' fees to the extent permitted by law) shall, on demand, be immediately due from Mortgagee to Mortgagee and the same shall be secured by this Mortgagee.

(c) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, the unpaid principal portion of the Advances shall continue to bear interest at the rate payable pursuant to the applicable Credit Documents until the Award shall have been actually received by Mortgagee, and any reduction in the Obligations resulting from the application by Mortgagee of the Award shall be deemed to take effect only on the date of such receipt.

Restoration If the Buildings or the Building Equipment shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any taking in condemnation proceedings or the exercise of any right of eminent domain, Mortgagee shall promptly restore, replace or rebuild the same to as nearly as possible the value, quality and condition they were in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by Mortgagee which approval shall not be unreasonably withheld or delayed, or apply the amount of any Award or insurance proceeds received with respect thereto, in each case in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement. Mortgagee shall give prompt notice to Mortgagee of any damage or destruction to the Buildings or Building Equipment by fire or other casualty, as well as the initiation of any condemnation or eminent domain proceeding affecting the same.

10

16. Default

(a) Any Event of Default under the Credit Agreement shall constitute an Event of Default hereunder and Mortgagee shall have all of the rights of the Administrative Agent and Collateral Agent under the Credit Agreement and all of the remedies hereunder.

(b) All notice and cure periods provided in the Credit Agreement shall run concurrently with any notice and cure periods provided under applicable law.

17. Mortgagee's Right to Perform Mortgagee's Covenants If there shall be an Event of Default, Mortgagee may, at its option, cure such Event of Default, and Mortgagee and its representatives shall have the right to enter the Premises to do so, and the amounts advanced by, and the other costs and expenses of, Mortgagee in curing such Event of Default, with interest from the time of the advances or payments at the Base Rate plus the Applicable Margin, shall, on demand, be immediately due from Mortgagee to Mortgagee and shall be secured by this Mortgagee.

18. Contemporaneous Mortgages THIS MORTGAGE IS MADE CONTEMPORANEOUSLY WITH TWO (2) OTHER MORTGAGES OR DEEDS OF TRUST OF EVEN DATE HERewith (as any of the same may be amended, supplemented, restated, severed, consolidated, spread, partially released, increased or otherwise modified from time to time, the "Contemporaneous Mortgages") GIVEN TO MORTGAGEE COVERING PROPERTY LOCATED IN THE STATES OF TENNESSEE AND WISCONSIN. The Contemporaneous Mortgages secure the Obligations. Upon the occurrence of an Event of Default, Mortgagee may proceed under this Mortgage and/or the Contemporaneous Mortgages against any of such property and/or the Property in one or more parcels and in such manner and order as Mortgagee shall elect. Mortgagee hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, any right to have the property and/or the Property covered by the Contemporaneous Mortgages marshalled upon any foreclosure of this Mortgage or the Contemporaneous Mortgages.

19. Appointment of Receiver After the occurrence and during the continuance of an Event of Default, Mortgagee may apply for the appointment of a receiver of the Rents (as defined in Paragraph 47), issues, and profits of all or any part of the Property from whatever source derived and thereupon it is hereby expressly covenanted and agreed that the court shall forthwith appoint such receiver with the usual powers and duties of receivers in like cases; and said appointment shall be made by the court ex parte as a matter of strict right to Mortgagee, without notice to or demand upon Mortgagee or any Person claiming through or under Mortgagee, and Mortgagee shall be entitled to the appointment of such receiver as a matter of right, to the extent not prohibited by applicable law, without consideration of the value of the Property as security for the amounts due to Mortgagee or the Secured Parties or the solvency of any Person liable for the payment of such amounts. Mortgagee hereby specifically waives the right to object to the appointment of a receiver as aforesaid and hereby expressly consents that such appointment shall be made ex parte and without notice to Mortgagee as an

11

admitted equity and as a matter of absolute right to Mortgagee. In order to maintain and preserve the Property and to prevent waste and impairment of its security, Mortgagee may, at its option, advance monies to the appointed receiver and all such sums advanced shall become secured obligations and shall bear interest from the date of such advance at the rate of interest specified in Section 2.9 of the Credit Agreement.

20. Intentionally Deleted

21. Judicial Foreclosure After the occurrence and during the continuance of an Event of Default, Mortgagee may institute an action of foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement hereof and realization on the Property or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire principal then outstanding under the Credit Documents, with interest thereon at the rate stipulated in the Credit Documents to the date of default and thereafter at the default interest rate specified in Section 2.9 of the Credit Agreement together with all other sums secured by this Mortgage, all costs of suit, including, without limitation, the expenses which are described in Paragraphs 25 and 29, and interest at the default interest rate specified in Section 2.9 of the Credit Agreement on any judgment obtained by Mortgagee from and after the date of any judicial sale of any of the Property until actual payment. Upon any sale or sales made hereunder, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee and/or any of the Secured Parties may bid for and acquire any of the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Obligations the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. Except as otherwise provided in the Credit Agreement, the proceeds of such sale shall be applied first to the payment of the costs and charges of such sale, including, without limitation, Mortgagee's attorneys' fees, (to the extent permitted by law), and second to the payment of the Obligations, the surplus money, if any, to be paid to the Person(s) legally entitled thereto (including Mortgagor, to the extent so entitled, if at all). Upon the request of Mortgagee and to the extent not prohibited by applicable law, Mortgagor shall execute and file with the clerk of the court a legally sufficient waiver of any statutory waiting period with respect to the execution of a judgment obtained by Mortgagee in connection with any foreclosure proceedings. The obligation of Mortgagor to so execute and file such waiver shall survive the termination of this Mortgage. Following a foreclosure sale, the sheriff shall deliver to the purchaser the sheriff's deed (and bill of sale as to any personalty) conveying the property so sold without any covenant or warranty, express or implied.

22. Sale in Parcels In the event of a foreclosure of this Mortgage or upon any sale under this Mortgage pursuant to judicial proceedings or otherwise, the Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Mortgagee in its sole discretion may select.

12

23. Notice Upon Acceleration Whenever Mortgagee in this Mortgage is given the option to accelerate the maturity of all or part of the Obligations upon the occurrence of an Event of Default, Mortgagee may, to the extent permitted by law, do so without prior notice or demand to or upon Mortgagor except as otherwise specifically provided herein.

24. Possession of Premises To the extent permitted by law, after the occurrence and during the continuance of an Event of Default, Mortgagee and its agents and any receiver appointed by a court are authorized to (a) take possession of the Premises, with or without legal action, and by force if necessary; (b) lease the Premises or make modifications to or cancel Leases; (c) maintain, repair, alter, and restore the Premises; (d) with or without taking possession, collect all Rents and profits payable under all Leases directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists under this Mortgage accompanied by a demand on such lessee for the payment to Mortgagee of all Rents due and to become due under its Lease, and Mortgagor FOR THE BENEFIT OF MORTGAGEE AND EACH SUCH LESSEE hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said Rents to Mortgagee without regard to the truth of Mortgagee's statement of an Event of Default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default such that the payment of rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the Lease for the payment of Rents by the lessee to Mortgagor; and (e) after deducting all costs of collection and administration expense, apply the net Rents and profits to the payment of Impositions, insurance premiums and all other carrying charges (including, without limitation, agents' compensation and fees and reasonable costs of counsel to the extent permitted by law, and receivers) and to the maintenance, repair or restoration of the Premises, or, except as otherwise provided in the Credit Agreement, on account and in reduction of the Obligations in such order and amounts as Mortgagee in Mortgagee's sole discretion may elect. Mortgagee shall be liable to account only for Rents and profits actually received by Mortgagee.

25. Expenses of Mortgagee and/or the Secured Parties All sums (including reasonable attorneys' fees and disbursements, to the extent permitted by law) paid by Mortgagee and/or any of the Secured Parties in connection with any litigation to prosecute or defend the rights and obligations created by this Mortgage, with interest thereon at the default interest rate specified in Section 2.9 of the Credit Agreement from the time of payment by Mortgagee and/or any of the Secured Parties shall, on demand, be immediately due from Mortgagor to Mortgagee and/or any such Secured Party and shall be added to and included in the Obligations and shall be secured by this Mortgage.

26. Mortgagor's Waivers

(a) Mortgagor, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, (i) the benefit of any and all valuation and appraisal laws, (ii) any right of redemption whether statutory or otherwise, in respect of the Property, (iii) any applicable

13

homestead or dower laws, (iv) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of court in the nature of any one or more of them, (v) any right to have any of the Property marshalled upon foreclosure of this Mortgage, (vi) the right to interpose any set-off, recoupment, counterclaim or cross-claim in any litigation in any court with respect to, in connection with, or arising out of this Mortgage or any of the other Credit Documents unless such set-off, recoupment, counterclaim or cross-claim could not, by reason of the applicable Federal or State procedural laws, be interposed, pleaded or alleged in any other action, and (vii) trial by jury in connection with any litigation arising out of this Mortgage or any of the other Credit Documents and any right it may have to claim or recover in any such litigation any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages.

(b) Mortgagee, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, trial by jury in connection with any litigation arising out of this Mortgage or any of the other Credit Documents.

27. Partial Foreclosure Mortgagee may from time to time, if permitted by law, take action to recover any sums, whether interest, principal or any other sums, required to be paid under this Mortgage or any other Credit Document as the same become due, without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Mortgagor existing when such earlier action was commenced. Mortgagee may also foreclose this Mortgage for any sums due under this Mortgage or any other Credit Document and the lien of this Mortgage shall continue to secure the balance of the Obligations due.

28. No Waiver; Rights Cumulative No failure or delay on the part of Mortgagee or any of the Secured Parties 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 Mortgagee and each of the Secured Parties 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.

29. Attorneys' Fees If this Mortgage shall be foreclosed, or if any of the Credit Documents is placed in the hands of an attorney for collection or is collected through any court, including any bankruptcy court, there shall be included in the computation of the sums secured hereby, to the extent permitted by law, the amount of a reasonable fee for the services of the attorney retained by Mortgagee in the foreclosure action or proceeding, and all disbursements, costs, allowances and additional allowances provided by law.

14

30. Interest After Maturity The Obligations secured by this Mortgage shall bear interest from and after maturity, whether or not resulting from acceleration, at the default interest rate specified in Section 2.9 of the Credit Agreement, but this shall not constitute an extension of time for payment of the Obligations.

31. No Credit for Taxes Mortgagor shall not claim or demand or be entitled to any credit or credits on account of any of the sums secured hereby by reason of the Impositions assessed against all or any part of the Property or for any payments made on account thereof. No deductions shall be made or claimed from the taxable value of all or any part of the Premises by reason of this Mortgage.

32. Liens This Mortgage is and shall be maintained as a valid first lien on the Property subject only to any encumbrances created pursuant to the Credit Documents and the Existing Liens and the Permitted Liens, if any. Notwithstanding any provision in the Credit Documents to the contrary, Mortgagor shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the Rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien"), whether senior or junior in lien to this Mortgage, other than the lien of (i) this Mortgage and (ii) the Permitted Liens (including 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; provided, however, that Mortgagor shall give Mortgagee at least twenty (20) days prior written notice of any Permitted Lien described in the parenthetical to clause (ii) above which is to be created after the date hereof together with a reasonably detailed description thereof; and provided, further, that nothing contained in this Paragraph shall require Mortgagor to pay any real estate taxes or other Impositions prior to the time when same are required to be paid under this Mortgage. Mortgagor will keep and maintain all of the Premises free from all liens of Persons supplying labor or materials relating to the construction, alteration, modification or repair of the Premises. If any such lien shall be filed against any of the Property, Mortgagor agrees to discharge the same of record (by payment, bonding or otherwise) within 10 days of notice of the filing thereof. No financing statement, conditional bill of sale or chattel mortgage shall be made or filed against any Building Equipment without the prior consent of Mortgagee and if at any time there should be any (with or without the consent of Mortgagee), then upon the occurrence and during the continuance of an Event of Default, all right, title and interest of Mortgagor in and to all deposits and payments made thereon are hereby assigned to Mortgagee.

33. Change in Taxation In the event of the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (a) deducting or allowing Mortgagor to deduct from the value of the Property for the purpose of taxation any lien or security interest thereon, (b) imposing, modifying or deeming applicable any reserve or special requirement against deposits in or for the account of, or loans by, or other liabilities of, or other assets held by Mortgagee or any of the Secured Parties, or (c) subjecting Mortgagee or any of the Secured Parties to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby,

15

or the manner of collection of such taxes, in each such case, so as to affect this Mortgage, the Obligations, Mortgagee or any of the Secured Parties, and the result is to increase the taxes imposed upon or the cost to Mortgagee or any of the Secured Parties of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder or under the other Credit Documents, then, and in any such event, Mortgagor shall, on demand, pay to Mortgagee for the account of Mortgagee or any of the Secured Parties, as the case may be, such additional amounts as may be required to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful or would constitute usury under applicable law, then Mortgagee may, at its option, require Mortgagor to make a partial repayment of the Obligations in an amount equal to the then value of the Premises.

34. Assignment of Leases and Rents Mortgagor absolutely and unconditionally assigns to Mortgagee the Rents, issues and profits of the Premises as further security for the payment of the Obligations and Mortgagor grants to Mortgagee during the existence of an Event of Default the right to enter the Premises for the purpose of collecting the same and to let the Premises, or any part thereof, and, except as otherwise provided in the Credit Agreement, to apply said Rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the payment in full of the Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit. Mortgagee hereby waives the right to enter the Premises for the purpose of collecting said Rents, issues and profits, and Mortgagor shall be entitled to collect, receive and use said Rents, issues and profits, until the occurrence and during the continuance of and Event of Default. During the continuance of any Event of Default, the right of Mortgagor to collect, receive and use said Rents, issues and profits, shall be revoked forthwith. Further, from and after delivery of written notice of such revocation, constructive possession of the Premises shall be vested in Mortgagee, and this assignment shall be activated and perfected. Notwithstanding the foregoing, this assignment shall also be activated and perfected upon Mortgagee's exercising, upon the occurrence and during the continuance of an Event of Default, any of the following remedies pursuant to this Mortgage: (i) taking actual possession of the Premises; (ii) moving or applying for the appointment of a receiver; (iii) filing or commencing an action to foreclose this Mortgage; or (iv) collecting the Rents directly from the tenant(s). Mortgagor shall, from time to time after request by Mortgagee, execute, acknowledge and deliver to Mortgagee, in form reasonably satisfactory to Mortgagee, separate assignments effectuating the foregoing. Neither Mortgagee nor the Secured Parties shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any Lease or other agreement affecting all or any part of the Premises, and Mortgagor hereby agrees to indemnify Mortgagee and the Secured Parties for and hold them harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Premises upon Mortgagee or the Secured Parties, nor make Mortgagee or the other Secured Parties liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Premises resulting in injury, death or property damage. In addition, after the occurrence and during the continuance of

16

an Event of Default and following the giving of notice to Mortgagor, Mortgagor will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said Rents, issues and profits, the fair and reasonable rental value for the use and occupancy of the Premises or of such part thereof as may be in the possession of Mortgagor, and upon default in any such payment will vacate and surrender the possession thereof to Mortgagee or to such receiver, and in default thereof may be evicted by summary or other proceedings.

35. Security Agreement It is the intention of the parties hereto that this instrument shall constitute a Security Agreement and a Financing

Statement within the meaning of the Uniform Commercial Code as enacted in the state in which the Land is located with respect to the personality and fixtures comprising a part of the Property, and that a security interest shall attach thereto for the benefit of Mortgagee, as secured party, to further secure the Obligations. Mortgagor hereby authorizes Mortgagee to file financing and continuation statements with respect to such collateral in which Mortgagor has a mortgageable interest, without the signature of Mortgagor whenever lawful, and upon request, Mortgagor shall promptly execute financing and continuation statements in form satisfactory to Mortgagee to further evidence and secure Mortgagee's interest in such collateral, and shall pay all filing fees in connection therewith. In the event of the occurrence and during the continuance of an Event of Default, Mortgagee, pursuant to the applicable provision of the Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that in the event Mortgagee elects to proceed with respect to collateral constituting personality or fixtures separately from the real property, without demand, notice or advertisement whatsoever except that where an applicable statute requires reasonable notice of sale or the dispositions, the giving of ten (10) days' notice by Mortgagee to Mortgagor, shall be deemed to be reasonable notice thereof and Mortgagor waives any other notice with respect thereto.

36. No Release Neither Mortgagor nor any other Person now or hereafter obligated for the payment or performance of all or any portion of the Obligations shall be released from paying such Obligations and the lien of this Mortgage shall not be affected by reason of (a) the failure of Mortgagee or any of the Secured Parties to comply with any request of Mortgagor, or of any other Person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any of the covenants and agreements of Mortgagor under the Credit Documents, (b) the release, regardless of consideration, of the whole or any part of the security held for the Obligations, (c) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or performance of all or any portion of the Obligations, or (d) any agreement or stipulation extending the time of payment or modifying the terms of any of the Credit Documents, and in the event of such agreement or stipulation, Mortgagor and all such other Persons shall continue to be liable under the Credit Documents, as amended by such agreement or stipulation, unless expressly released and discharged in writing by Mortgagee and the Secured Parties.

17

37. Notices All notices, consents and other communications provided for herein shall be sent to such Person's address as follows (or to such other address indicated in an unrevoked written notice from such Person given in accordance the terms of this Paragraph):

(a) if to Mortgagor, Douglas Dynamics, L.L.C., 7777 North 73rd Street, Milwaukee, WI 53223, Attention: Chief Executive Officer and President, Telecopy No.: (414) 354-8448, with a copy to Aurora Capital Group, 10877 Wilshire Boulevard, Suite 2100, Los Angeles, CA 90024, Attention: Secretary, Douglas Dynamics Holdings, Inc., Telecopier No.: (310) 824-2791, with a copy to Gibson, Dunn & Crutcher LLP, 333 S. Grand Avenue, Los Angeles, CA 90071, Attention: Jeff R. Hudson, Esq., Telecopy No.: 213-229-6332; and

(b) if to Mortgagee or Collateral Agent, at Credit Suisse, Cayman Islands Branch, Eleven Madison Avenue, New York, NY 10010, Attention: Ian Nalitt, Telecopy No.: (212) 325-8615, with a copy to Skadden Arps Slate Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071-3144, Attention: David Kitchen, Esq., Telecopy No.: (213) 621-5280; and

(c) if to any of the Secured Parties, at the address set forth below such Secured Party's name on the signature pages of the Credit Agreement.

Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, 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 Mortgagee shall be effective until received by Mortgagee.

38. Severability In case any provision in or obligation hereunder 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.

39. Intentionally Deleted

40. Indemnification Against Liabilities Mortgagor will defend, indemnify, pay and hold harmless Mortgagee and the Secured Parties and their respective officers, partners, directors, trustees, employees, agents and Affiliates of Mortgagee and each of the Secured Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee and any of the Secured Parties by reason of (a) ownership of a mortgagee's or participating lender's interest in the Property, (b) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, unless

18

due to the willful misconduct of Mortgagee or such Secured Party, (c) any use, nonuse or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof made or suffered to be made by or on behalf of Mortgagor, (f) any negligence or tortious act on the part of Mortgagor or any of its agents, contractors, lessees, licensees or invitees, or (g) any work in connection with any alterations, changes, new construction or demolition of the Premises. All amounts payable to Mortgagee and the Secured Parties under this Paragraph shall be payable promptly on demand and shall be deemed indebtedness and Obligations secured by this Mortgage and any such amounts shall bear interest at the default interest rate specified in Section 2.9 of the Credit Agreement from the date of such demand. In case any action, suit or proceeding is brought against Mortgagor, Mortgagee and/or any of the Secured Parties by reason of any such occurrence, Mortgagor, upon request of Mortgagee or any of the Secured Parties will, at Mortgagor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Mortgagee or such Secured Party and approved by Mortgagee.

41. No Oral Changes This Mortgage and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

42. Governing Law THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS MORTGAGE AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPALS THEREOF.

43. Construction This Mortgage shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

44. Headings Paragraph 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.

45. After Acquired Property All property of every kind which is hereafter acquired by Mortgagor which, by the terms hereof, is required or

intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further giving of a deed of trust and/or mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage.

19

46. Further Assurances Mortgagor shall execute, acknowledge and deliver to Mortgagee any documents and instruments which Mortgagee may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting of Mortgagee's security and rights under this Mortgage, in form and substance reasonably satisfactory to Mortgagee.

47. Definitions The following terms shall, for all purposes of this Mortgage, have the respective meanings herein specified unless the context otherwise requires and such meanings shall apply equally to the singular and plural forms of such defined terms unless a definition is provided herein for both the singular and plural form of such defined term:

(a) **"Lease"** shall mean every lease or occupancy agreement for the use or hire of all or any portion of the Premises, which shall be in effect at the date hereof or which shall hereafter be entered into by or on behalf of Mortgagor.

(b) **"Rents"** shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Land and the Building, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property, and proceeds, if any, from business interruption or other loss of income insurance.

48. Successors and Assigns The terms, covenants and provisions of this Mortgage shall apply to and be binding upon Mortgagor and the successors and assigns of Mortgagor and shall inure to the benefit of Mortgagee, the Secured Parties and their respective successors and assigns. All grants, covenants, terms, provisions, and conditions contained herein shall run with the Land.

49. Credit Agreement In the event of any inconsistency or conflict between the terms and provisions of the Credit Agreement and this Mortgage, the terms and provisions of the Credit Agreement shall control.

50. State Specific Provisions

(a) **Applicability of Maine Law:** Notwithstanding anything else contained herein to the contrary, where provisions contained in this Section 50 conflict with other provisions of this Mortgage, these provisions shall control.

(b) **Statutory Condition:** This Mortgage is given upon the STATUTORY CONDITION, which is incorporated herein by reference. To the extent that the provisions of this Mortgage and the provisions set forth in the Statutory

20

Conditions conflict, the provisions of this Mortgage shall control to the extent permitted by applicable law.

(c) **Statutory Power of Sale:** If any Event of Default shall occur, the Mortgagee shall have the right to foreclose this Mortgage under any legal method of foreclosure in existence at the time or now existing, or under any other applicable law, including, without limitation, the **STATUTORY POWER OF SALE**, which is expressly incorporated herein by reference, to the extent authorized or allowed by any present or future law of the State of Maine. In connection therewith, Mortgagor acknowledges that this Mortgage secures a loan or loans for business and commercial purposes and that this Mortgage is given primarily for a business, commercial or agricultural purpose.

(d) **Non-Waiver:** Mortgagor agrees for itself, its successor and assigns, that the acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of this Mortgage, of insurance proceeds, eminent domain awards, rents or anything else of value to be applied on or to the Secured Obligations by the Mortgagee, the Lenders or any person or party holding under Lender shall not constitute a waiver of such foreclosure by the Mortgagee or waiver of the failure of performance by the Mortgagor of any covenants or agreements contained herein, in the other Credit Documents, or in the Credit Agreement. This agreement by Mortgagor shall be that agreement referred to in 14 M.R.S.A. § 6204, as amended, as necessary to prevent such waiver of foreclosure. This agreement by Mortgagor is intended to apply to the acceptance and such applications of any such insurance proceeds, eminent domain awards, rents and other sums or anything else of value, whether the same shall be accepted from, or for the account of, Mortgagor or from any other sources whatsoever by the Mortgagee, or by any person or party holding under Mortgagee at any time or times in the future while any portion of the Obligations shall remain outstanding.

(e) **Open-ended Mortgage; Limitations:** This Mortgage is an open-end mortgage, which secures existing indebtedness, "Future Advances" "Contingent Obligations" and "Protective Advances" as such terms are defined in 33 M.R.S.A. § 505. The maximum aggregate amount of all debts or obligations secured by this Mortgage, including Future Advances and Contingent Obligations, but excluding Protective Advances, shall not at any time exceed the total amount of \$170,000,000. The future advances secured hereby shall be made those advances made to or for the account of Mortgagor and may be made under the Credit Agreement and the Credit Documents, as the same may be amended, or may be made pursuant to promissory notes, line of credit agreements or other instruments evidencing such future advances which may be hereafter executed and delivered by Mortgagor to Mortgagee. In the event that any notice described in subsections 5(a) and 5(b) of 33 M.R.S.A. § 505 is recorded or is received by Mortgagee, any commitment, agreement or obligation to make future advances to or for the benefit of Mortgagor shall immediately cease.

(f) **Financing Statement:** This instrument constitutes a financing statement under Article 9-A of the Maine Uniform Commercial Code covering the Building Equipment, fixtures, and the other items and types of collateral included within

21

the Property and described in this Mortgage. For purposes of this Section 50(f), the debtor is Mortgagor and the secured party is the Mortgagee. The mailing address of the secured party (Mortgagee) from which information concerning the security interest may be obtained and the mailing address of the debtor (Mortgagor), are set forth below:

Mortgagee:

Credit Suisse, Cayman Islands Branch, as Collateral Agent
Eleven Madison Avenue
New York, NY 10010

Attention: Ian Nalitt

Mortgagor:

Douglas Dynamics, L.L.C.
7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President

(g) The employer identification number of Mortgagor is 42-1623692. The organization identification number of Mortgagor is 3781861.

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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed under seal as of the day and year first above written.

Mortgagor:

DOUGLAS DYNAMICS, L.L.C.

By:

Name:
Title:

STATE OF _____
COUNTY OF _____, ss

On May _____, 2007, personally appeared before me, the above named _____, as _____ of said Douglas Dynamics, L.L.C., and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of said limited liability company.

Notary Public
Typed or Printed Name:

Exhibit A

Description of the Land

LEGAL DESCRIPTION

PARCEL 1:

BEGINNING at a stake and stones on Thomaston Street and at the Northeast corner bound of land formerly of Webber; thence generally easterly by and along said Thomaston Street, sixty (60) feet to land now or formerly of Spicer; thence southerly and at a right angle by land of said Spicer ninety (90) feet to other land of Spicer; thence westerly by land of said Spicer, sixty (60) feet to land of said Webber; thence at a right angle by land of said Webber, ninety (90) feet to said Thomaston Street and place of beginning.

BEGINNING at a stake at land formerly of Thomas Glover Wheeler; thence running westerly along Thomaston Street sixty (60) feet to a stake; thence running South ninety (90) feet to a stake; thence running East sixty (60) feet to a stake; thence running North ninety (90) feet to the place of beginning.

BEGINNING at the Southeast corner of Parcel 1B, as described above; thence westerly one hundred seventy two (172) feet to a line fence and land now or formerly of Prentiss Webber; thence southerly one hundred two (102) feet, more or less, to land now or formerly of Forrest L. Hooper and Barbara M. Hooper; thence easterly one hundred seventy two (172) feet along line of said Hooper to a right of way; thence northerly one hundred two (102) feet, more or less, to the place of beginning. Together with a right of way in common with others on the easterly side of said lot on the road as now traveled.

FOR REFERENCE, see deed of Mary M. Taylor to Fisher Engineering, Inc. recorded in Book 1020, Page 233 of the Knox County Registry of Deeds; and Rockland Tax Map #62, Lot A 5. The premises conveyed is known as 170 Thomaston Street.

EXCEPTIONS:

- a. An easement in favor of Central Maine Power Company to erect, maintain, repair, rebuild, operate and control electric transmission and distribution lines beginning at pole 32 112.1 and extending in a southwesterly direction one pole, which easement is recorded in Book 390, Page. 444 of the Knox County Registry of Deeds; and
- b. An easement granted by Patricia C. Spicer to Victor R. and Mary E. Malmstrom dated 30 April 1969 and recorded that date in Book 489, Page 247 of said Registry of Deeds, The easement conveys the right to draw water from a well located on the subject property, and to maintain a pipeline underground for the purpose of transmitting water from the well to the adjoining Malmstrom property. The grantor assumed no responsibility for her operation or maintenance of the well but reserved the right to draw water from the well sharing equally in the available supply of water.

PARCEL 2:

BEGINNING on the westerly side of a roadway and at the Northeast corner of land of Grantor at a fence; thence westerly two hundred thirty two (232) feet to a line fence; thence North along said line fence one hundred fifty (150) feet to land formerly of Varnum E. Nickles and Helen Nickles; thence easterly in a straight line and said line running at right angles with said line fence two hundred thirty two (232) feet to a stake on the easterly side of said roadway; thence southerly along the easterly side of said roadway one hundred fifty (150) feet to a fence and place of beginning. Also granting a right of way on the easterly side of the above described lot over the road as now traveled.

BEGINNING at an iron post on the westerly side of Ingraham Right of Way; so called; thence in a generally southerly direction by and along property now or formerly owned by the City of Rockland, a distance of fifty (50) feet to a post; thence by and along this Grantor's line in a westerly direction a distance of one hundred ninety (190) feet to a post; thence northerly along said land of said Grantor's

EXHIBIT A— LEGAL DESCRIPTION
(Continued)

land a distance of fifty (50) feet to an iron post; thence easterly one hundred ninety (190) feet along land now or formerly of Hooper to place of beginning.

FOR REFERENCE, see deed of Forrest L. Hooper, Jr. and Barbara M. Hooper to Fisher Engineering, Inc. recorded in .Book 1028, Page 231 of the Knox County Registry of Deeds; and Rockland Tax Map #62, Lots A7 and A8. The property herein conveyed is known as 170 Thomaston Street (rear).

EXCEPTIONS:

a. Acknowledgment of Common Boundaries between Forrest L. Hooper, Jr. & Barbara H, Hooper and Douglas Dynamics, Inc. dated 28 March 1995 and recorded 12 May 1995 at Book 1915, Page 47 of the Knox County Registry of Deeds.

PARCEL 3:

BEGINNING at the westerly line of land of Fisher Engineering, Inc.; thence running along Thomaston Street easterly sixty (60) feet to a stake; thence southerly ninety (90) feet to a stake; thence running westerly sixty (60) feet to a stake; thence northerly ninety (90) feet to the place of beginning. Being the same premises conveyed to Prentiss Webber et ux. by Thomas Clover Wheeler by deed dated April 5, 1955, and recorded in the Knox County Registry of Deeds, Book 345., Page 78.

BEGINNING at the southeast corner of land of this Grantor, which land is situated at 170 Thomaston Street; thence westerly along the southerly side of said land sixty (60) feet- to land of Fisher Engineering, Inc.; thence southerly along land of Fisher Engineering, Inc. one hundred five (105) feet, more or less, to land now or formerly of Bernice Williams; thence easterly along land of Bernice Williams sixty (60) feet to a stake at other land of Varnum Nickles; thence northerly along said land of Nickles one hundred five (105) feet, more or less, to land of Avery and place of beginning. Being the same premises conveyed to Prentiss E. Webber and Ruth Webber by Varnum and Helen Nickles, dated August 2, 1962, and recorded in the Knox County Registry of Deeds, Book 403, Page 101.

BEGINNING at a stake on Thomaston Street at land of this Grantor; thence running East sixty (60) feet to a stake and at land now or formerly of Howard F. Avery; thence running South by said Avery land ninety (90) feet to a stake; thence running West along land now or formerly of Wheeler sixty (60) feet to a stake; thence running North along line of this Grantor ninety (90) feet to a stake and place of beginning. Being a portion of the premises conveyed to Prentiss E. Webber and Ruth Webber by Howard F. and Emma B. Avery by deed dated August 27, 1963, and recorded in the Knox Registry of Deeds, Book 423, Page 160.

BEGINNING at the easterly corner of property formerly of Dennison; thence one hundred (100) feet, more or less, parallel with Thomaston Street to the southwesterly corner of property of Fisher Engineering, Inc.; thence southerly two hundred (200) feet, more or less, to a corner of land of this grantor; thence one hundred (100) feet, more or less, in an easterly direction to the corner of a lot formerly of Dennison; thence northerly two hundred (200) feet, more or less, to the place of beginning.

COMMENCING at the easterly corner of the land of Grantor at land now or formerly of Hooper; thence southeasterly along the land of Hooper approximately one hundred forty (140) feet to other land of Hooper; thence southwesterly along the land of Hooper two hundred (200) feet to the land now or formerly of Fisher Engineering, Inc; thence northwesterly along land now or formerly of Fisher Engineering" Inc. one hundred forty (140) feet, more or less, to land of this Grantor; thence northeasterly along the land of Grantor approximately two hundred (200) feet to. the place of beginning.

EXHIBIT A— LEGAL DESCRIPTION
(Continued)

FOR REFERENCE, see deed of Oliver J. Dennison and Gloria J. Dennison to Fisher Engineering, Inc., recorded in Book 998, Page 121 of the Knox County Registry of Deeds; and Rockland Tax Map #62, Lot A 6. The property herein conveyed is also known as 248 Thomaston Stre

EXCEPTIONS:

a. An easement for the erection and maintenance of electric wires between poles 32 1/2 and 32 1/2.1 granted by A. L. Nickles to Central Maine Power Company dated 18 November 1955, recorded 11 January 1956 In Book 348, Page 417 of the Knox County Registry of Deeds.

b. An easement beginning at Pole 32 1/2.1 and extending southwesterly one pole to be numbered 32 1/2.2 on old Thomaston Road granted by V.E. and H.L. Nickles to Central Maine Power Company dated 6 June 1961, recorded 19 June 1961 in Book 390, Page 444 of said Registry of Deeds;

c. Easements from Homer Gilbert to Central Maine Power Company recorded in Book 348, Page 79 and in Book 686, Page 82 of said Registry of Deeds, which mayor may not affect the subject property; and

d. "Certain pole rights granted to Central Maine Power" (not more specifically Identified) referred to In the warranty deed of Benjamin H. Nickles to E. B. Bodman recorded 30 September 1946 In Book 293, Page 69 of said Registry of Deeds.

PARCEL 4:

BEGINNING at a granite monument at the southeasterly corner of this Grantor, Fisher Engineering, Inc., as recorded in the Knox County Registry of Deeds, Book 970, Page 3; thence North 9 degrees 55 minutes 48 seconds East by land of Grantor a distance of 464.72 feet to a granite monument; thence South 85 degrees 12 minutes 20 seconds West a distance of 33.98 feet to a granite monument; thence North 9 degrees 07 minutes 30 seconds East still by land of Grantor a distance of 291.98 feet to a granite monument; thence North 23 degrees 08 minutes 18 seconds East still by land of Grantor and land now or formerly of Barbara M. and Forrest L. Hooper, Jr., as 'recorded in the Knox County Registry of Deeds, Book 616, Page 246 a distance of 213.10 feet to an iron rod placed, said iron rod being North 23 degrees 08 minutes 18 seconds East a

distance of 35.38 feet from a granite monument at the southeasterly corner of said Hooper property; thence South S5 degrees 37 minutes 12 seconds East by land of this Grantor a distance of 267.17 feet to an iron rod in the northerly line of Gordon Drive; thence South 84 degrees 22 minutes 48 seconds West by the northerly line of Gordon Drive a distance of 65 feet to an iron rod placed at the end of Gordon Drive; thence South 5 degrees 37 minutes 12 seconds East by the end of Gordon Drive a distance of 50 feet to an iron rod placed; thence continuing the same course South 5 degrees 37 minutes 12 seconds East by land of this Grantor a distance of 626.58 feet to an iron rod placed; thence South 82 degrees 38 minutes 55 seconds West still by land of this Grantor a distance of 1066.40 feet to an iron rod placed at the line of the State of Maine property; thence North 21 degrees 10 minutes 35 seconds East by said State of Maine property a distance of 20 feet to an iron rod; thence North 24 degrees 10 minutes 52 seconds East still by said State property a distance of 15 feet to an iron rod; thence North 82 degrees 31 minutes 02 seconds East by said State property a distance of 375 feet to a granite monument at the southwesterly corner of this Grantor; thence continuing the same course North 82 degrees 31 minutes 01 second East by land of this Grantor a distance of 472.35 feet to the place of beginning. Containing 3.018 acres.

All the courses described in the above description were deduced from an observed magnetic north in the field having a declination of 17 degrees 38 minutes 20 seconds West of true North as observed by solar observations in the field.

Also conveying any rights that this Grantor may have to that portion of the so called Ingraham Lane lying within the bounds of the above described lot.

27

EXHIBIT A — LEGAL DESCRIPTION

(Continued)

FOR REFERENCE, see deed of the Inhabitants of the City of Rockland to Fisher Engineering, Inc. recorded in Book 991, Page 56 of the Knox County Registry of Deeds; and Plan of Industrial Park recorded In Cabinet 5, Sheet 129 of the Knox County Registry of Deeds.

EXCEPTIONS:

- a. A twenty foot right of way for the benefit of owners of the W.E. Ingraham Lot and other adjoining owners to Main Street, as referenced in deed of Lawrence and Portland Cement Company to Gross, recorded in Book 282, Page 63 of said Registry of Deeds; and
- b. An easement in favor of the City of Rockland for utilities and drainage with the right to construct and maintain drainage ditches on a strip of and fifteen feet wide adjacent to the line of Gordon Drive, as recorded at Book 991, Page 56 of said Registry of Deeds.

PARCEL 5:

BEGINNING at a cement monument on the southerly side of Thomaston Street, so called, at land conveyed by Homer K. Gilbert to the State of Maine by deed recorded in the Knox County Registry of Deeds, Book 786, Page 70; thence South 15 degrees 46 minutes 09 seconds East and by said land of State of Maine, 307.24 feet to a 51B inch iron rod; thence North 82 degrees 00 minutes 23 seconds East and still by said land of State of Maine, 400 feet to a corner; thence South 00 degrees 37 minutes 22 seconds West, 1000 feet to a corner of land of the City of Rockland as noted in the Knox County Registry of Deeds, Book 740, Page 212; thence North 82 degrees 31 minutes 01 seconds East and by said land of the City of Rockland, 472.35 feet to a granite monument; thence North 09 degrees 55 minutes 48 seconds East and by land of the City of Rockland as noted in the Knox County Registry of Deeds, Book 514, Page 262, 464.72 foot to a granite monument; thence South B5degrees 12 minutes 20 seconds West and still by said land of the City of Rockland, 33.98 feet to corner; thence North 09 degrees 07 minutes 30 seconds East and still by said land of the City of Rockland, 291.98 feet to a corner; thence North 23 degrees 08 minutes 18 seconds East 177.92 feet; thence South 84 degrees 27 minutes 40 seconds West and by property noted in the Knox County Registry of Deeds, Book 616, Page 246, 190 feet to a corner; thence North 23 degrees 08 minutes 18 seconds East, 50 feet to an iron rod; thence South 84 degrees 27 minutes 40 seconds West, 93.78 feet to a corner; thence North 05 degrees 21 minutes 29 seconds West, 337.92 feet to the southerly side of Thomaston Street, said point being the northwesterly corner of land now or formerly of Dennison as noted in the Knox County Registry of Deeds, Book 604, Page 117; thence South 84 degrees 05 minutes 21 seconds West by the southerly side of Thomaston Street, 809.51 feet to the place of beginning. Containing approximately 16.982 acres.

FOR REFERENCE, see deed of Homer K. Gilbert to Fisher Engineering, Inc. recorded in Book 970, Page 03 of the Knox County Registry of Deeds; and Plan showing property being conveyed to Fisher Engineering, Inc. by Homer K. Gilbert dated July 1984 by Frederick E. Beal.

EXCEPTIONS:

- a. Guying rights conveyed by Homer Gilbert to Central Maine Power Company in deed dated 10 June 1955, recorded 21 September 1955 in Book 348, Page 79 of said Registry of Deeds;
- b. A right of way to the State of Maine Over the subject property from Thomaston Street, for the passage of men, vehicles and equipment, as described in the deed of Gilbert dated 4 June 1971, recorded 11 June 1971 in Book 517, Page 77 of said Registry of Deeds. This right of way may or may not affect the subject property.

28

Exhibit B

Existing Liens

1. All those exceptions to title set forth on Exhibit B to Loan Policy No. M-5847(A) issued by Lawyers Title Insurance Corporation.
2. Those liens and security interests granted in favor of the ABL Collateral Agent disclosed by the Intercreditor Agreement.

29

**MORTGAGE, ASSIGNMENT OF LEASES,
RENTS AND PROFITS AND SECURITY AGREEMENT**

DOUGLAS DYNAMICS, L.L.C.

Mortgagor

to

CREDIT SUISSE, CAYMAN ISLANDS BRANCH
in its capacity as Collateral Agent for the Secured Parties
Eleven Madison Avenue
New York, New York 10010

Mortgagee

DATED: As of May 21, 2007

Premises located in:
Milwaukee, Wisconsin

Record and Return to:
Skadden Arps Slate Meagher & Flom LLP
300 South Grand Avenue
Los Angeles, California 90071
Attn: Eric Lee, Esq.

INDEX

	<u>Page No.</u>
1. Payment of Obligations and Performance of Covenants and Agreements	6
2. Title to Property	6
3. Intercreditor Agreement	7
4. Future Advances	7
5. Insurance	7
6. Impositions	7
7. Maintenance and Alterations	8
8. Leasing	8
9. Recording, Filing and Other Fees	9
10. Taxes Imposed on Mortgagee and the Secured Parties	9
11. Compliance with Laws, etc.	9
12. Inspection	9
13. Certificate of Mortgagor	9
14. Condemnation	9
15. Restoration	10
16. Default	11
17. Mortgagee's Right to Perform Mortgagor's Covenants	11
18. Contemporaneous Mortgages	11
19. Appointment of Receiver	11
20. Power of Sale	12
21. Judicial Foreclosure	12
22. Sale in Parcels	12
23. Notice Upon Acceleration	12
24. Possession of Premises	13
25. Expenses of Mortgagee and/or the Secured Parties	13
26. Mortgagor's Waivers	13
27. Partial Foreclosure	14
28. No Waiver; Rights Cumulative	14
29. Attorneys' Fees	14
30. Interest After Maturity	14
31. No Credit for Taxes	14
32. Liens	15
33. Change in Taxation	15
34. Assignment of Leases and Rents	16
35. Security Agreement	16
36. No Release	17
37. Notices	17
38. Severability	18
39. Intentionally Deleted	18
40. Indemnification Against Liabilities	18
41. No Oral Changes	19
42. Governing Law	19

43. Construction	19
44. Headings	19
45. After Acquired Property	19
46. Further Assurances	19
47. Definitions	19
48. Successors and Assigns	20

49.	Credit Agreement	20
50.	WAIVER OF JURY TRIAL	20

Exhibit A	Description of the Land
Exhibit B	Existing Liens

**MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND PROFITS
AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND PROFITS AND SECURITY AGREEMENT(this “**Mortgage**”) made as of this 21st day of May, 2007 by **DOUGLAS DYNAMICS, L.L.C.**, a Delaware limited liability company having an office at 7777 North 73rd Street, Milwaukee, Wisconsin 53223 (the “**Mortgagor**”), to **CREDIT SUISSE, CAYMAN ISLANDS BRANCH**(“**Credit Suisse**”), as collateral agent (in such capacity, and together with its successors and assigns, the “**Mortgagee**”), having an office at Eleven Madison Avenue, New York, New York 10010, for the Secured Parties (as such term and other capitalized terms used but not otherwise defined herein are defined in the Credit Agreement, defined below).

WITNESSETH:

WHEREAS, Mortgagor is the owner of the fee interest in those certain parcels of land lying and being situated in the City of Milwaukee, Milwaukee County, Wisconsin, as more particularly described in Exhibit A attached hereto;

WHEREAS, Mortgagor, as Borrower, Fisher, LLC, a Delaware limited liability company (“**Fisher**”), Douglas Dynamics Finance Company, a Delaware corporation (“**DD Finance**”), and Douglas Dynamics Holdings, Inc., a Delaware corporation (“**Holdings**”), as 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, as sole bookrunner, sole lead arranger, syndication agent, documentation agent, administrative agent for the Lenders (“**Term Administrative Agent**”), and as collateral agent for the Lenders, have entered into 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, the “**Credit Agreement**”), pursuant to which Lenders have agreed to make, and Mortgagee has agreed to administer, certain credit facilities in an aggregate amount not to exceed \$85,000,000, which extensions of credit shall be used for the purposes permitted under the Credit Agreement, upon the terms and conditions contained in the Credit Agreement; and

WHEREAS, Mortgagor has agreed to execute and deliver to Mortgagee this Mortgage in order to better secure Mortgagor’s performance of Mortgagor’s obligations under the Credit Agreement and under any of the other Credit Documents;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, including Mortgagee’s entering into the Credit Agreement, the receipt and legal sufficiency of which are hereby expressly acknowledged by all parties, to secure the full and complete payment and performance of the Obligations, including Mortgagor’s performance of Mortgagor’s obligations pursuant to the Credit Agreement, this Mortgage and the other Credit Documents, Mortgagor and Mortgagee hereby agree as follows:

Mortgagor does hereby grant, pledge, mortgage, warrant, sell, transfer, assign, and convey unto Mortgagee subject only to the Permitted Liens and Existing Liens (defined below), all of its right, title and interest in the following (collectively, the “**Property**”):

- A. All that certain land located in the City of Milwaukee, Milwaukee County, Wisconsin, and more particularly described in Exhibit A annexed hereto and made a part hereof (collectively, the “**Land**”).
- B. All the buildings, structures and improvements, now or at any time hereafter erected on the Land or any part thereof (collectively, the “**Buildings**”).
- C. All machinery, apparatus, equipment, personal property and fixtures of every kind and nature whatsoever now or hereafter located in, on or about any one or more of the Buildings or upon the Land, or attached to or used or useable in connection with the operation or maintenance of the Land or any one or more of the Buildings, or any part thereof, and now owned or hereafter acquired (collectively, the “**Building Equipment**”; the Land, the Buildings and the Building Equipment being hereafter sometimes collectively referred to as the “**Premises**”).
- D. All right, title and interest of Mortgagor, whether now owned or hereafter acquired, in and to any opened or proposed avenues, streets, roads, public places, sidewalks, alleys, strips or gores of land, in front of or adjoining the Land or any one or more of the Buildings and all easements, tenements, hereditament, appurtenances, rights and rights of way, public or private, pertaining or belonging to the Land or any one or more of the Buildings.
- E. All insurance proceeds and all awards and payments, subject to applicable provisions of this Mortgage, including interest thereon, and the right to receive the same, which may be made in respect of all or any part of any of the Premises or any estate or interest therein or appurtenant thereto, as a result of damage to or destruction of all or any part of any of the Premises, the exercise of the right of condemnation or eminent domain, the closing of, or the alteration of the grade of, any street on or adjoining the Land, or any other injury to or decrease in the value of all or any part of any of the Premises.
- F. All right, title and interest of Mortgagor in and to any and all present and future Leases (as defined in Paragraph 47) of all or any part of the Premises, and in and to the rents, issues and profits payable thereunder and cash or securities deposited thereunder as lessees’ security deposits.
- G. All franchises, permits, licenses and rights therein respecting the use, occupation and operation of the Premises or the activities conducted thereon or therein.
- H. All right, title and interest of Mortgagor in and to any minerals, oil or gas located on, under or appurtenant to the Land.
- I. All right, title and interest of Mortgagor in and to any tax refunds with respect to the Premises.

J. To the extent assignable, all of Mortgagor’s interest in and to all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of the Premises and all right, title and interest of Mortgagor therein (collectively, the “**Contracts**”).

K. All of Mortgagor's interest in and to all easements, rights, licenses, privileges and appurtenances including, without limitation, development and air rights now or hereafter belonging or in any way appertaining to the Land.

L. All of the estate and rights of Mortgagor now or hereafter acquired in and to land lying in streets, roads, ways and alleys, open or proposed, adjoining or contiguous to the Land.

M. The rents, issues and profits of any of the foregoing.

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns, forever. Provided, that if (i) Mortgagor shall perform all obligations hereunder and (ii) the Obligations are paid in full, the Commitments are cancelled or terminated and all outstanding Letters of Credit are cancelled or have expired, then this Mortgage shall be released without warranty, at the cost and request of Mortgagor.

AND MORTGAGOR COVENANTS, REPRESENTS AND WARRANTS TO AND FOR THE BENEFIT OF MORTGAGEE AND THE SECURED PARTIES AS FOLLOWS:

1. Payment of Obligations and Performance of Covenants and Agreements Mortgagor shall pay or perform the Obligations when due in accordance with the provisions of the Credit Agreement, this Mortgage, and the other Credit Documents and perform the covenants and agreements of Mortgagor set forth in the Credit Documents.

2. Title to Property Mortgagor represents and warrants that (a) it owns good and marketable fee simple title to the Premises, (b) it has the good and unrestricted right, full power and lawful authority to make this Mortgage in accordance with the terms hereof, (c) Mortgagor has obtained any and all consents and approvals necessary or required for the making of this Mortgage, and the making of this Mortgage will not violate any contract or agreement to which Mortgagor is a party or by which the Property is bound, and (d) the Premises is free of all liens, encumbrances, adverse claims and other defects of title whatsoever except those items listed on Exhibit B annexed hereto and made a part hereof (collectively, the "**Existing Liens**") and Permitted Liens. Mortgagor does hereby and shall forever warrant and defend its title to and interest in the Property and the validity and priority of the lien of this Mortgage, subject to the Existing Liens and the Permitted Liens, to Mortgagee and the Secured Parties, their respective successors and assigns, against all claims and demands whatsoever of any Person or Persons. As of the date hereof, there are no defenses or offsets to this Mortgage or to the Obligations.

6

3. Intercreditor Agreement Notwithstanding anything herein to the contrary, and regardless of the priority of recordation of this Mortgage, the lien and security interests granted to the Mortgagee pursuant to this Mortgage and the exercise of any right or remedy by such Mortgagee hereunder are subject to the provisions of that certain Intercreditor Agreement, dated as of May 21, 2007 (the "**Intercreditor Agreement**"), by and among Mortgagor, Fisher, DD Finance, Holdings, Mortgagee, Term Administrative Agent, Credit Suisse, in its capacity as administrative agent under the ABL Loan Documents (as defined therein), and JPMorgan Chase Bank, N.A., in its capacity as collateral agent under the ABL Loan Documents (together with its successors and assigns from time to time in such capacity, the "**ABL Collateral Agent**"). In the event of any conflict between the terms of the Intercreditor Agreement and this Mortgage, the terms of the Intercreditor Agreement shall govern.

4. Future Advances Without limiting the generality of any other provision hereof, or the terms and provisions of the Credit Agreement, the Obligations shall include, without limitation: (a) all existing indebtedness of Mortgagor to Mortgagee and/or any of the Secured Parties evidenced by any of the Credit Documents; (b) all future advances that may subsequently be made by Mortgagee and/or the Lenders as provided by any of the Credit Documents; and (c) all other indebtedness, if any, of Mortgagor to Mortgagee and/or any of the Secured Parties now due or to become due or hereafter contracted pursuant to any of the Credit Documents; provided that the maximum principal amount of all existing indebtedness, future advances, readvances of sums repaid and all other indebtedness secured hereby at any one time shall not exceed the total sum of \$170,000,000 (exclusive of interest thereon, attorneys' fees and costs, taxes, insurance premiums and all other obligations hereunder).

5. Insurance

(a) Mortgagor shall maintain in full force and effect with respect to the Premises the insurance as required by Section 5.5 of the Credit Agreement.

(b) In the event of a foreclosure of this Mortgage or other action or proceeding taken by Mortgagee pursuant to this Mortgage, the purchaser of the Premises shall succeed to all of the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance which Mortgagor is required to maintain under Paragraph 5(a) and to all proceeds of such insurance.

6. Impositions

(a) Mortgagor shall pay, not later than the final delinquency date thereof (and if payable in installments, not later than the installment final delinquency date), all real estate taxes, personal property taxes, assessments, water rates and sewer rents, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Land, and any other amounts which could be or become a lien upon or against the Property or any part thereof (collectively, the "**Impositions**"); provided, no such Imposition need be paid if it is being contested in good faith by appropriate proceedings

7

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. Notwithstanding the foregoing, Mortgagor shall promptly, and in any event on demand, pay such contested Imposition if at any time all or any part of the Property shall be in danger of being foreclosed, sold, forfeited, or otherwise lost or if such contest shall be discontinued. During the continuance of any Event of Default, upon demand by Mortgagee, Mortgagor will pay the whole of any assessment (an "**Assessment**") for local improvements which may be payable in installments, notwithstanding that such installments may not be due and payable at the time of such demand.

(b) Mortgagor shall, upon request of Mortgagee, deliver to Mortgagee, within twenty (20) days after the final delinquency date thereof of any Imposition or Assessment, receipts evidencing such payment or other proof of payment satisfactory to Mortgagee.

7. Maintenance and Alterations Mortgagor will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, the Premises and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

8. Leasing Mortgagor represents that there are no Leases now in effect. Mortgagor shall not enter into any Lease of all or any part of any of the Premises without in each instance obtaining Mortgagee's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Mortgagor shall deliver to Mortgagee a duplicate original of each Lease promptly after the execution thereof. At the option of Mortgagee, each Lease, and all renewals, replacements, extensions, and modifications thereof, and all rights of the tenant thereunder, shall be subject and subordinate to this Mortgage, and to each and every advance made or thereafter made hereunder or under the other Credit Documents and to all renewals, additions, amendments, supplements, modifications, consolidations, spreaders,

replacements, and extensions of this Mortgage and shall contain provisions obligating the tenants thereunder to attorn to Mortgagee or any purchaser therefrom if Mortgagee or such purchaser succeeds to the interest of Mortgagor under such Lease. Mortgagor shall fully and promptly perform all of the obligations to be performed by the lessor under any and all Leases. Mortgagor shall enforce the performance and observance of each and every obligation to be performed or observed by the lessees under such Leases. Mortgagor shall give prompt notice to Mortgagee of (a) any notice received by Mortgagor of any default by the lessor under any Lease, (b) the commencement of any action or proceeding by any lessee the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable thereunder, (c) any notice of default given by Mortgagor to the lessee under any Lease, or (d) the interposition by any lessee of any defense or counterclaim in any action or proceeding brought by Mortgagor against such lessee; and Mortgagor will cause a copy of any process, pleading or notice received or served by Mortgagor in reference to any such action, defense or claim to be promptly delivered to Mortgagee. Mortgagor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall not

mingle such funds with other funds. Mortgagor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

9. Recording, Filing and Other Fees Mortgagor shall pay all recording and filing fees, all recording taxes, and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of this Mortgage and any other Credit Documents, and shall reimburse Mortgagee and each of the Secured Parties on demand for all costs and expenses of any kind incurred by Mortgagee or any of the Secured Parties in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements). Mortgagor will, at any time on request of Mortgagee, execute or cause to be executed financing statements, continuation statements, or the like, in respect of any Building Equipment. Mortgagor shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

10. Taxes Imposed on Mortgagee and the Secured Parties Mortgagor shall pay all taxes (except income, inheritance and franchise taxes, taxes on the receipt of debt service payments, or taxes in lieu of any of the foregoing) imposed on Mortgagee or any of the Secured Parties by reason of its ownership of this Mortgage or any of the other Credit Documents.

11. Compliance with Laws, etc. Mortgagor shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

12. Inspection Mortgagee and its authorized representatives shall have the right, at Mortgagee's option, at reasonable times during normal business hours and upon reasonable prior written notice, and as often as may be reasonably requested, to enter the Premises for the purpose of inspecting the same and any other Collateral.

13. Certificate of Mortgagor Mortgagor, upon request of Mortgagee or any of the Secured Parties, shall certify to Mortgagee or to such Secured Party or to any proposed assignee of or participant in this Mortgage, by an instrument in form reasonably satisfactory to Mortgagee or such Secured Party, duly acknowledged, the amount of the Obligations then owing, whether any offsets or defenses exist against payment or performance of all or any portion of the Obligations and anything else that Mortgagee or such Secured Party might reasonably request, within ten (10) days if the request is made personally, or within fifteen (15) days if the request is made by mail. Mortgagee, Secured Parties and any actual or proposed assignee of or participant in this Mortgage shall have the right to rely on such certification.

14. Condemnation

(a) Mortgagor shall give notice to Mortgagee upon Mortgagor receiving written notice of the commencement of any action or proceeding to take all or any part of the Premises by exercise of the right of condemnation or eminent domain or of any action

or proceeding to close or to alter the grade of any street on or adjoining the Land. Mortgagee may participate in any such action or proceeding in the name of Mortgagee or, whenever necessary, in the name of Mortgagor, and Mortgagor shall deliver to Mortgagee such instruments as Mortgagee shall request to permit such participation. Mortgagor shall not settle any such action or proceeding or agree to accept any award or payment without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed), and such award or payment and any interest thereon (hereinafter collectively called the "Award") shall be applied in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement.

(b) The application of any Award toward payment of the Obligations shall not be deemed a waiver by Mortgagee or any of the Secured Parties of its right to receive payment of the balance of the Obligations in accordance with the provisions of the Credit Documents. Mortgagee shall have the right, but shall be under no obligation, to question the amount of the Award, and Mortgagee may accept the same without prejudice to the rights that Mortgagee may have to question such amount. In any such condemnation or eminent domain action or proceeding Mortgagee may be represented by attorneys selected by Mortgagee, and all sums paid by Mortgagee in connection with such action or proceeding (including, without limitation, reasonable attorneys' fees to the extent permitted by law) shall, on demand, be immediately due from Mortgagor to Mortgagee and the same shall be secured by this Mortgage.

(c) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, the unpaid principal portion of the Advances shall continue to bear interest at the rate payable pursuant to the applicable Credit Documents until the Award shall have been actually received by Mortgagee, and any reduction in the Obligations resulting from the application by Mortgagee of the Award shall be deemed to take effect only on the date of such receipt.

15. Restoration If the Buildings or the Building Equipment shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any taking in condemnation proceedings or the exercise of any right of eminent domain, Mortgagor shall promptly restore, replace or rebuild the same to as nearly as possible the value, quality and condition they were in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by Mortgagee which approval shall not be unreasonably withheld or delayed, or apply the amount of any Award or insurance proceeds received with respect thereto, in each case in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement. Mortgagor shall give prompt notice to Mortgagee of any damage or destruction to the Buildings or Building Equipment by fire or other casualty, as well as the initiation of any condemnation or eminent domain proceeding affecting the same.

16. Default

(a) Any Event of Default under the Credit Agreement shall constitute an Event of Default hereunder and Mortgagee shall have all of the rights of the Administrative Agent and Collateral Agent under the Credit Agreement and all of the remedies hereunder.

(b) All notice and cure periods provided in the Credit Agreement shall run concurrently with any notice and cure periods provided under applicable law.

17. Mortgagee's Right to Perform Mortgagor's Covenants If there shall be an Event of Default, Mortgagee may, at its option, cure such Event of Default, and Mortgagee and its representatives shall have the right to enter the Premises to do so, and the amounts advanced by, and the other costs and expenses of, Mortgagee in curing such Event of Default, with interest from the time of the advances or payments at the Base Rate plus the Applicable Margin, shall, on demand, be immediately due from Mortgagor to Mortgagee and shall be secured by this Mortgage.

18. Contemporaneous Mortgages THIS MORTGAGE IS MADE CONTEMPORANEOUSLY WITH TWO (2) OTHER MORTGAGES OR DEEDS OF TRUST OF EVEN DATE HEREWITH (as any of the same may be amended, supplemented, restated, severed, consolidated, spread, partially released, increased or otherwise modified from time to time, the "Contemporaneous Mortgages") GIVEN TO MORTGAGEE COVERING PROPERTY LOCATED IN THE STATES OF TENNESSEE AND MAINE. The Contemporaneous Mortgages secure the Obligations. Upon the occurrence of an Event of Default, Mortgagee may proceed under this Mortgage and/or the Contemporaneous Mortgages against any of such property and/or the Property in one or more parcels and in such manner and order as Mortgagee shall elect. Mortgagor hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, any right to have the property and/or the Property covered by the Contemporaneous Mortgages marshalled upon any foreclosure of this Mortgage or the Contemporaneous Mortgages.

19. Appointment of Receiver After the occurrence and during the continuance of an Event of Default, Mortgagee may apply for the appointment of a receiver of the Rents (as defined in Paragraph 47), issues, and profits of all or any part of the Property from whatever source derived and thereupon it is hereby expressly covenanted and agreed that the court shall forthwith appoint such receiver with the usual powers and duties of receivers in like cases; and said appointment shall be made by the court ex parte as a matter of strict right to Mortgagee, without notice to or demand upon Mortgagor or any Person claiming through or under Mortgagor, and Mortgagee shall be entitled to the appointment of such receiver as a matter of right, to the extent not prohibited by applicable law, without consideration of the value of the Property as security for the amounts due to Mortgagee or the Secured Parties or the solvency of any Person liable for the payment of such amounts. Mortgagor hereby specifically waives the right to object to the appointment of a receiver as aforesaid and hereby expressly consents that such appointment shall be made ex parte and without notice to Mortgagor as an admitted equity and as a matter of absolute right to Mortgagee. In order to maintain and preserve the Property and to prevent waste and impairment of its security, Mortgagee

11

may, at its option, advance monies to the appointed receiver and all such sums advanced shall become secured obligations and shall bear interest from the date of such advance at the rate of interest specified in Section 2.9 of the Credit Agreement.

20. Power of Sale To the extent permitted by the laws of the State of Wisconsin, Mortgagee is hereby granted a power of sale and may sell any of the Premises (together with the Rents and profits and intangible personalty), or such part or parts thereof or interests therein as Mortgagee may select.

21. Judicial Foreclosure After the occurrence and during the continuance of an Event of Default, Mortgagee may institute an action of foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement hereof and realization on the Property or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire principal then outstanding under the Credit Documents, with interest thereon at the rate stipulated in the Credit Documents to the date of default and thereafter at the default interest rate specified in Section 2.9 of the Credit Agreement together with all other sums secured by this Mortgage, all costs of suit, including, without limitation, the expenses which are described in Paragraphs 25 and 29, and interest at the default interest rate specified in Section 2.9 of the Credit Agreement on any judgment obtained by Mortgagee from and after the date of any judicial sale of any of the Property until actual payment. Upon any sale or sales made hereunder, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee and/or any of the Secured Parties may bid for and acquire any of the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Obligations the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. Except as otherwise provided in the Credit Agreement, the proceeds of such sale shall be applied first to the payment of the costs and charges of such sale, including, without limitation, Mortgagee's attorneys' fees, (to the extent permitted by law), and second to the payment of the Obligations, the surplus money, if any, to be paid to the Person(s) legally entitled thereto (including Mortgagor, to the extent so entitled, if at all). The obligation of Mortgagor to so execute and file such waiver shall survive the termination of this Mortgage. Following a foreclosure sale, the sheriff shall deliver to the purchaser the sheriff's deed (and bill of sale as to any personalty) conveying the property so sold without any covenant or warranty, express or implied.

22. Sale in Parcels In the event of a foreclosure of this Mortgage or upon any sale under this Mortgage pursuant to judicial proceedings or otherwise, the Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Mortgagee in its sole discretion may select.

23. Notice Upon Acceleration Whenever Mortgagee in this Mortgage is given the option to accelerate the maturity of all or part of the Obligations upon the occurrence of an Event of Default, Mortgagee may, to the extent permitted by

12

law, do so without prior notice or demand to or upon Mortgagor except as otherwise specifically provided herein.

24. Possession of Premises To the extent permitted by law, after the occurrence and during the continuance of an Event of Default, Mortgagee and its agents and any receiver appointed by a court are authorized to (a) take possession of the Premises, with or without legal action, and by force if necessary; (b) lease the Premises or make modifications to or cancel Leases; (c) maintain, repair, alter, and restore the Premises; (d) with or without taking possession, collect all Rents and profits payable under all Leases directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists under this Mortgage accompanied by a demand on such lessee for the payment to Mortgagee of all Rents due and to become due under its Lease, and Mortgagor FOR THE BENEFIT OF MORTGAGEE AND EACH SUCH LESSEE hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said Rents to Mortgagee without regard to the truth of Mortgagee's statement of an Event of Default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default such that the payment of rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the Lease for the payment of Rents by the lessee to Mortgagor; and (e) after deducting all costs of collection and administration expense, apply the net Rents and profits to the payment of Impositions, insurance premiums and all other carrying charges (including, without limitation, agents' compensation and fees and reasonable costs of counsel to the extent permitted by law, and receivers) and to the maintenance, repair or restoration of the Premises, or, except as otherwise provided in the Credit Agreement, on account and in reduction of the Obligations in such order and amounts as Mortgagee in Mortgagee's sole discretion may elect. Mortgagee shall be liable to account only for Rents and profits actually received by Mortgagee.

25. Expenses of Mortgagee and/or the Secured Parties All sums (including reasonable attorneys' fees and disbursements, to the extent permitted by law) paid by Mortgagee and/or any of the Secured Parties in connection with any litigation to prosecute or defend the rights and obligations created by this Mortgage, with interest thereon at the default interest rate specified in Section 2.9 of the Credit Agreement from the time of payment by Mortgagee and/or any of the Secured Parties shall, on demand, be immediately due from Mortgagor to Mortgagee and/or any such Secured Party and shall be added to and included in the Obligations and shall be secured by this Mortgage.

26. Mortgagor's Waivers Mortgagor, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, (i) the benefit of any and all valuation and appraisal laws, (ii) any right of redemption whether statutory or otherwise, in respect of the

Property, (iii) any applicable homestead or dower laws, (iv) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of court in the nature of any one or more of them, (v) any right to have any of the Property marshalled upon foreclosure of this Mortgage, (vi) the right to interpose any set-off, recoupment, counterclaim or cross-claim in any litigation in any court with respect to, in connection with, or arising out of

this Mortgage or any of the other Credit Documents unless such set-off, recoupment, counterclaim or cross-claim could not, by reason of the applicable Federal or State procedural laws, be interposed, pleaded or alleged in any other action, and (vii) any right Mortgagee may have to claim or recover in any litigation arising out of this Mortgage or any of the other Credit Documents any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages.

27. Partial Foreclosure Mortgagee may from time to time, if permitted by law, take action to recover any sums, whether interest, principal or any other sums, required to be paid under this Mortgage or any other Credit Document as the same become due, without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Mortgagor existing when such earlier action was commenced. Mortgagee may also foreclose this Mortgage for any sums due under this Mortgage or any other Credit Document and the lien of this Mortgage shall continue to secure the balance of the Obligations due.

28. No Waiver; Rights Cumulative No failure or delay on the part of Mortgagee or any of the Secured Parties 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 Mortgagee and each of the Secured Parties 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.

29. Attorneys' Fees If this Mortgage shall be foreclosed, or if any of the Credit Documents is placed in the hands of an attorney for collection or is collected through any court, including any bankruptcy court, there shall be included in the computation of the sums secured hereby, to the extent permitted by law, the amount of a reasonable fee for the services of the attorney retained by Mortgagee in the foreclosure action or proceeding, and all disbursements, costs, allowances and additional allowances provided by law.

30. Interest After Maturity The Obligations secured by this Mortgage shall bear interest from and after maturity, whether or not resulting from acceleration, at the default interest rate specified in Section 2.9 of the Credit Agreement, but this shall not constitute an extension of time for payment of the Obligations.

31. No Credit for Taxes Mortgagor shall not claim or demand or be entitled to any credit or credits on account of any of the sums secured hereby by reason of the Impositions assessed against all or any part of the Property or for any payments made on account thereof. No deductions shall be made or claimed from the taxable value of all or any part of the Premises by reason of this Mortgage.

32. Liens This Mortgage is and shall be maintained as a valid first lien on the Property subject only to any encumbrances created pursuant to the Credit Documents and the Existing Liens and the Permitted Liens, if any. Notwithstanding any provision in the Credit Documents to the contrary, Mortgagor shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the Rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien"), whether senior or junior in lien to this Mortgage, other than the lien of (i) this Mortgage and (ii) the Permitted Liens (including 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; provided, however, that Mortgagor shall give Mortgagee at least twenty (20) days prior written notice of any Permitted Lien described in the parenthetical to clause (ii) above which is to be created after the date hereof together with a reasonably detailed description thereof; and provided, further, that nothing contained in this Paragraph shall require Mortgagor to pay any real estate taxes or other Impositions prior to the time when same are required to be paid under this Mortgage. Mortgagor will keep and maintain all of the Premises free from all liens of Persons supplying labor or materials relating to the construction, alteration, modification or repair of the Premises. If any such lien shall be filed against any of the Property, Mortgagor agrees to discharge the same of record (by payment, bonding or otherwise) within 10 days of notice of the filing thereof. No financing statement, conditional bill of sale or chattel mortgage shall be made or filed against any Building Equipment without the prior consent of Mortgagee and if at any time there should be any (with or without the consent of Mortgagee), then upon the occurrence and during the continuance of an Event of Default, all right, title and interest of Mortgagor in and to all deposits and payments made thereon are hereby assigned to Mortgagee.

33. Change in Taxation In the event of the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (a) deducting or allowing Mortgagor to deduct from the value of the Property for the purpose of taxation any lien or security interest thereon, (b) imposing, modifying or deeming applicable any reserve or special requirement against deposits in or for the account of, or loans by, or other liabilities of, or other assets held by Mortgagee or any of the Secured Parties, or (c) subjecting Mortgagee or any of the Secured Parties to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Mortgage, the Obligations, Mortgagee or any of the Secured Parties, and the result is to increase the taxes imposed upon or the cost to Mortgagee or any of the Secured Parties of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder or under the other Credit Documents, then, and in any such event, Mortgagor shall, on demand, pay to Mortgagee for the account of Mortgagee or any of the Secured Parties, as the case may be, such additional amounts as may be required to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful or would constitute usury under applicable law, then Mortgagee may, at its option, require Mortgagor to make a partial repayment of the Obligations in an amount equal to the then value of the Premises.

34. Assignment of Leases and Rents Mortgagor absolutely and unconditionally assigns to Mortgagee the Rents, issues and profits of the Premises as further security for the payment of the Obligations and Mortgagor grants to Mortgagee during the existence of an Event of Default the right to enter the Premises for the purpose of collecting the same and to let the Premises, or any part thereof, and, except as otherwise provided in the Credit Agreement, to apply said Rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the payment in full of the Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit. Mortgagee hereby waives the right to enter the Premises for the purpose of collecting said Rents, issues and profits, and Mortgagor shall be entitled to collect, receive and use said Rents, issues and profits, until the occurrence and during the continuance of and Event of Default. During the continuance of any Event of Default, the right of Mortgagor to collect, receive and use said Rents, issues and profits, shall be revoked forthwith. Further, from and after delivery of written notice of such revocation, constructive possession of the Premises shall be vested in Mortgagee, and this assignment shall be activated and perfected. Notwithstanding the foregoing, this assignment shall also be activated and perfected upon Mortgagee's exercising, upon the occurrence and during the continuance of an Event of Default, any of the following remedies pursuant to this Mortgage: (i) taking actual possession of the Premises; (ii) moving or applying for the appointment of a receiver; (iii) filing or commencing an action to foreclose this Mortgage; or (iv) collecting the Rents directly from the tenant(s). Mortgagor shall, from time to time after request by Mortgagee, execute, acknowledge and deliver to Mortgagee, in form reasonably satisfactory to

Mortgagee, separate assignments effectuating the foregoing. Neither Mortgagee nor the Secured Parties shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any Lease or other agreement affecting all or any part of the Premises, and Mortgagor hereby agrees to indemnify Mortgagee and the Secured Parties for and hold them harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Premises upon Mortgagee or the Secured Parties, nor make Mortgagee or the other Secured Parties liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Premises resulting in injury, death or property damage. In addition, after the occurrence and during the continuance of an Event of Default and following the giving of notice to Mortgagor, Mortgagor will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said Rents, issues and profits, the fair and reasonable rental value for the use and occupancy of the Premises or of such part thereof as may be in the possession of Mortgagor, and upon default in any such payment will vacate and surrender the possession thereof to Mortgagee or to such receiver, and in default thereof may be evicted by summary or other proceedings.

35. Security Agreement It is the intention of the parties hereto that this instrument shall constitute a Security Agreement and a Financing Statement within the meaning of the Uniform Commercial Code as enacted in the state in which the Land is located with respect to the personalty and fixtures comprising a part of the Property,

16

and that a security interest shall attach thereto for the benefit of Mortgagee, as secured party, to further secure the Obligations. Mortgagor hereby authorizes Mortgagee to file financing and continuation statements with respect to such collateral in which Mortgagor has a mortgageable interest, without the signature of Mortgagor whenever lawful, and upon request, Mortgagor shall promptly execute financing and continuation statements in form satisfactory to Mortgagee to further evidence and secure Mortgagee's interest in such collateral, and shall pay all filing fees in connection therewith. In the event of the occurrence and during the continuance of an Event of Default, Mortgagee, pursuant to the applicable provision of the Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that in the event Mortgagee elects to proceed with respect to collateral constituting personalty or fixtures separately from the real property, without demand, notice or advertisement whatsoever except that where an applicable statute requires reasonable notice of sale or the dispositions, the giving of ten (10) days' notice by Mortgagee to Mortgagor, shall be deemed to be reasonable notice thereof and Mortgagor waives any other notice with respect thereto.

36. No Release Neither Mortgagor nor any other Person now or hereafter obligated for the payment or performance of all or any portion of the Obligations shall be released from paying such Obligations and the lien of this Mortgage shall not be affected by reason of (a) the failure of Mortgagee or any of the Secured Parties to comply with any request of Mortgagor, or of any other Person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any of the covenants and agreements of Mortgagor under the Credit Documents, (b) the release, regardless of consideration, of the whole or any part of the security held for the Obligations, (c) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or performance of all or any portion of the Obligations, or (d) any agreement or stipulation extending the time of payment or modifying the terms of any of the Credit Documents, and in the event of such agreement or stipulation, Mortgagor and all such other Persons shall continue to be liable under the Credit Documents, as amended by such agreement or stipulation, unless expressly released and discharged in writing by Mortgagee and the Secured Parties.

37. Notices All notices, consents and other communications provided for herein shall be sent to such Person's address as follows (or to such other address indicated in an unrevoked written notice from such Person given in accordance the terms of this Paragraph):

(a) if to Mortgagor, Douglas Dynamics, L.L.C., 7777 North 73rd Street, Milwaukee, WI 53223, Attention: Chief Executive Officer and President, Teletype No.: (414) 354-8448, with a copy to Aurora Capital Group, 10877 Wilshire Boulevard, Suite 2100, Los Angeles, CA 90024, Attention: Secretary, Douglas Dynamics Holdings, Inc., Teletype No.: (310) 824-2791, with a copy to Gibson, Dunn & Crutcher LLP, 333 S. Grand Avenue, Los Angeles, CA 90071, Attention: Jeff R. Hudson, Esq., Teletype No.: 213-229-6332; and

17

(b) if to Mortgagee or Collateral Agent, at Credit Suisse, Cayman Islands Branch, Eleven Madison Avenue, New York, NY 10010, Attention: Ian Nalitt, Teletype No.: (212) 325-8615, with a courtesy copy to Skadden Arps Slate Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071-3144, Attention: David S. Kitchen, Esq., Teletype No.: (213) 621-5280; and

(c) if to any of the Secured Parties, at the address set forth below such Secured Party's name on the signature pages of the Credit Agreement.

Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, 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 Mortgagee shall be effective until received by Mortgagee.

38. Severability In case any provision in or obligation hereunder 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.

39. Intentionally Deleted

40. Indemnification Against Liabilities Mortgagor will defend, indemnify, pay and hold harmless Mortgagee and the Secured Parties and their respective officers, partners, directors, trustees, employees, agents and Affiliates of Mortgagee and each of the Secured Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee and any of the Secured Parties by reason of (a) ownership of a mortgagee's or participating lender's interest in the Property, (b) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, unless due to the willful misconduct of Mortgagee or such Secured Party, (c) any use, nonuse or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof made or suffered to be made by or on behalf of Mortgagor, (f) any negligence or tortious act on the part of Mortgagor or any of its agents, contractors, lessees, licensees or invitees, or (g) any work in connection with any alterations, changes, new construction or demolition of the Premises. All amounts payable to Mortgagee and the Secured Parties under this Paragraph shall be payable promptly on demand and shall be deemed indebtedness and Obligations secured by this Mortgage and any such amounts shall bear interest at the default interest rate specified in Section 2.9 of the Credit Agreement from the date of such demand. In case any action, suit or proceeding is

18

brought against Mortgagor, Mortgagee and/or any of the Secured Parties by reason of any such occurrence, Mortgagor, upon request of Mortgagee or any of the Secured

Parties will, at Mortgagor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Mortgagee or such Secured Party and approved by Mortgagor.

41. No Oral Changes This Mortgage and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

42. Governing Law THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS MORTGAGE AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPALS THEREOF.

43. Construction This Mortgage shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

44. Headings Paragraph 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.

45. After Acquired Property All property of every kind which is hereafter acquired by Mortgagor which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further giving of a deed of trust and/or mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage.

46. Further Assurances Mortgagor shall execute, acknowledge and deliver to Mortgagee any documents and instruments which Mortgagee may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting of Mortgagee's security and rights under this Mortgage, in form and substance reasonably satisfactory to Mortgagee.

47. Definitions The following terms shall, for all purposes of this Mortgage, have the respective meanings herein specified unless the context otherwise requires and such meanings shall apply equally to the singular and plural forms of such defined terms unless a definition is provided herein for both the singular and plural form of such defined term:

(a) **"Lease"** shall mean every lease or occupancy agreement for the use or hire of all or any portion of the Premises, which shall be in effect at the date hereof or which shall hereafter be entered into by or on behalf of Mortgagor.

(b) **"Rents"** shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Land and the Building, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property, and proceeds, if any, from business interruption or other loss of income insurance.

48. Successors and Assigns The terms, covenants and provisions of this Mortgage shall apply to and be binding upon Mortgagor and the successors and assigns of Mortgagor and shall inure to the benefit of Mortgagee, the Secured Parties and their respective successors and assigns. All grants, covenants, terms, provisions, and conditions contained herein shall run with the Land.

49. Credit Agreement In the event of any inconsistency or conflict between the terms and provisions of the Credit Agreement and this Mortgage, the terms and provisions of the Credit Agreement shall control.

50. WAIVER OF JURY TRIAL MORTGAGOR AND MORTGAGEE HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MORTGAGE AND ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS MORTGAGE, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR FUTURE DEALINGS. MORTGAGOR AND MORTGAGEE REPRESENT AND WARRANT THAT EACH HAS HAD AN OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed under seal as of the day and year first above written.

Mortgagor:

DOUGLAS DYNAMICS, L.L.C.

By: _____

Name:
Title:

ACKNOWLEDGMENT

STATE OF)
)ss.
COUNTY OF)

Personally came before me this _____ day of May, 2007 the above named _____, the _____ of Douglas Dynamics, L.L.C. to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

*

Notary Public, State of _____
My Commission expires: _____, _____.)

* Names of persons signing in any capacity must be typed or printed below their signature.

22

Exhibit A

Description of the Land

A parcel of land in the Northwest One-quarter (1/4) of Section Fifteen (15), Township Eight (8) North, Range Twenty-one (21) East, in the City of Milwaukee, Milwaukee County, Wisconsin, more particularly described as follows: Commencing at the Southwest corner of said 1/4 Section; running thence North along the West line of said 1/4 Section, 1328.24 feet to a point in the extended center line of a 20 foot sewer easement; thence North 88°54'49" East along said center line of the 20 foot sewer easement and its extension, 468:61 feet to the point of beginning of the land to be described; thence South 0°01'16" East, 1055.57 feet to a point; thence North 88°57'47" East, 408.99 feet to a point in the present West line of North 73rd Street; thence North 0°02'25" West along the said present West line of North 73rd Street, 1055.90 feet to a point; thence South 88°54'49" West along the center line of a 20 foot sewer easement, 408.60 feet to the point of beginning.

23

Schedule B

Existing Liens

1. All those exceptions to title set forth on Schedule B to Loan Policy No. 440270M issued by Lawyers Title Insurance Corporation.
2. Those liens and security interests granted in favor of the ABL Collateral Agent disclosed by the Intercreditor Agreement.

THIS INSTRUMENT WAS DRAFTED BY:

Kevin Oliver, Esq.
Skadden, Arps, Slate, Meagher, & Flom LLP
300 South Grand Avenue
Los Angeles, California 90071

24

**Maximum principal indebtedness for
Tennessee Recording Tax purposes
is \$7,000,000.**

**DEED OF TRUST, ASSIGNMENT OF LEASES,
RENTS AND PROFITS AND SECURITY AGREEMENT**

DOUGLAS DYNAMICS, L.L.C.

Grantor

to

**FREDERIC H. BRANDT, ESQ.,
a resident of Washington County, Tennessee**

Trustee

for the benefit of

CREDIT SUISSE, CAYMAN ISLANDS BRANCH
in its capacity as Collateral Agent for the Secured Parties
Eleven Madison Avenue
New York, New York 10010

Beneficiary

Premises located in:
Washington County, Johnson City, Tennessee

Record and Return to:
Skadden Arps Slate Meagher & Flom LLP
300 South Grand Avenue
Los Angeles, California 90071
Attn: Eric Lee, Esq.

INDEX

	<u>Page No.</u>
1. Payment of Obligations and Performance of Covenants and Agreements	7
2. Title to Property	7
3. Intercreditor Agreement	7
4. Future Advances	8
5. Insurance	8
6. Impositions	8
7. Maintenance and Alterations	9
8. Leasing	9
9. Recording, Filing and Other Fees	9
10. Taxes Imposed on Beneficiary and the Secured Parties	10
11. Compliance with Laws, etc.	10
12. Inspection	10
13. Certificate of Grantor	10
14. Condemnation	10
15. Restoration	11
16. Default	11
17. Beneficiary's Right to Perform Grantor's Covenants	11
18. Contemporaneous Mortgages	12
19. Appointment of Attorney-in-Fact	12
20. Power of Sale	13
21. Application of Proceeds of Foreclosure and Other Remedies	14
22. Waiver of Redemption Rights	14
23. Judicial Foreclosure	14
24. Sale in Parcels	15
25. Notice Upon Acceleration	15
26. Possession of Premises	15
27. Expenses of Beneficiary and/or the Secured Parties	16
28. Grantor's Waivers	16
29. Partial Foreclosure	17
30. No Waiver; Rights Cumulative	17
31. Attorneys' Fees	17
32. Interest After Maturity	17
33. No Credit for Taxes	17
34. Liens	17
35. Change in Taxation	18
36. Assignment of Leases and Rents	18
37. Security Agreement	19
38. No Release	20
39. Notices	20
40. Severability	21
41. Intentionally Deleted	21
42. Indemnification Against Liabilities	21
<hr/>	
43. No Oral Changes	22
44. Governing Law	22
45. Construction	22
46. Headings	22
47. After Acquired Property	22
48. Further Assurances	22
49. Definitions	22
50. Successors and Assigns	23
51. Credit Agreement	23
52. Trustee	23
Exhibit A Description of the Land	
Exhibit B Existing Liens	

**DEED OF TRUST, ASSIGNMENT OF LEASES, RENTS AND PROFITS
AND SECURITY AGREEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES, RENTS AND PROFITS AND SECURITY AGREEMENT(this “**Deed of Trust**”) made as of this 21st day of May, 2007 by **DOUGLAS DYNAMICS, L.L.C.** (formerly known as New DD, LLC), a Delaware limited liability company having an office at 7777 North 73rd Street, Milwaukee, Wisconsin 53223 (the “**Grantor**”), to **FREDERIC H. BRANDT**, a resident of Washington County, Tennessee, whose address is c/o Brandt and Beeson, P.C., 206 Princeton Road, Suite 25, Johnson City, TN 37601 (including any successor trustee at the time of acting as such hereunder, the “**Trustee**”), for the benefit of **CREDIT SUISSE, CAYMAN ISLANDS BRANCH**(“**Credit Suisse**”), as collateral agent (in such capacity, and together with its successors and assigns, the “**Beneficiary**”), having an office at Eleven Madison Avenue, New York, New York 10010, for the Secured Parties (as such term and other capitalized terms used but not otherwise defined herein are defined in the Credit Agreement, defined below).

THIS INSTRUMENT COVERS PROPERTY WHICH IS OR MAY BECOME SO AFFIXED TO THE REAL PROPERTY AS TO BECOME FIXTURES AND ALSO CONSTITUTES A UCC FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER § 47-9-502 OF TENNESSEE CODE ANNOTATED.

GRANTOR IS THE RECORD OWNER OF THE PROPERTY DESCRIBED IN EXHIBIT A.

THE BENEFICIARY EXPRESSLY OBJECTS TO THE PRIORITY OF ANY MECHANICS’ OR MATERIALMEN’S LIENS IMPOSED SUBSEQUENT TO THE DATE OF THE RECORDATION OF THIS DEED OF TRUST AS SUCH PRIORITY WOULD OTHERWISE BE ALLOWED PURSUANT TO THE TERMS OF T.C.A. § 66-11-108.

NOTICE PURSUANT TO § 47-28-104 OF TENNESSEE CODE ANNOTATED: THIS DEED OF TRUST SECURES FUTURE ADVANCES WHICH ARE “OBLIGATORY ADVANCES” WITHIN THE MEANING OF THE AFORESAID STATUTE. THIS DEED OF TRUST IS FOR “COMMERCIAL PURPOSES WITHIN THE MEANING OF SAID STATUTE.

WITNESSETH:

WHEREAS, Grantor is the owner of the fee interest in those certain parcels of land lying and being situated in Washington County, Tennessee, as more particularly described in Exhibit A attached hereto;

WHEREAS, Grantor, as Borrower, Fisher, LLC, a Delaware limited liability company (“**Fisher**”), Douglas Dynamics Finance Company, a Delaware corporation (“**DD Finance**”), and Douglas Dynamics Holdings, Inc., a Delaware corporation (“**Holdings**”), as 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, as sole bookrunner, sole lead arranger, syndication agent, documentation agent, administrative agent for the Lenders (“**Term Administrative Agent**”), and as collateral agent for the Lenders, have entered into 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, the “**Credit Agreement**”), pursuant to which Lenders have agreed to make, and Beneficiary has agreed to administer, certain credit facilities in an aggregate amount not to exceed \$85,000,000, which extensions of credit shall be used for the purposes permitted under the Credit Agreement, upon the terms and conditions contained in the Credit Agreement; and

WHEREAS, Grantor has agreed to execute and deliver to Trustee for the benefit of Beneficiary this Deed of Trust in order to secure Grantor’s performance of Grantor’s obligations under the Credit Agreement and under any of the other Credit Documents;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, including Beneficiary’s entering into the Credit Agreement, the receipt and legal sufficiency of which are hereby expressly acknowledged by all parties, to secure the full and complete payment and performance of the Obligations, including Grantor’s performance of Grantor’s obligations pursuant to the Credit Agreement, this Deed of Trust and the other Credit Documents, Grantor and Beneficiary hereby agree as follows:

Grantor does hereby irrevocably GRANT, PLEDGE, MORTGAGE, WARRANT, SELL, TRANSFER, ASSIGN, and CONVEY unto Trustee and Trustee’s successors, assigns and substitutes in trust hereunder, with covenants of general warranty and **WITH POWER OF SALE** and right of entry and possession, for the use and benefit of Beneficiary, as collateral agent for the Lenders, the real and personal property, rights, titles, interests and estates constituting the Property (defined below), subject, however, to the Permitted Liens and Existing Liens (defined below) **TO HAVE AND TO HOLD** the Property unto Trustee and Trustee’s successors, assigns and substitutes in trust hereunder, subject to the terms and conditions of this Deed of Trust, **WITH POWER OF SALE**, forever, and Grantor does hereby bind itself, its successors and assigns to **WARRANT AND FOREVER DEFEND** the title to the Property unto Beneficiary against every person whomsoever lawfully claiming or to claim the same or any part thereof other than any person claiming by, through or under Beneficiary; provided, however, that if Grantor (i) shall perform all obligations hereunder and (ii) the Obligations are paid in full, the Commitments are cancelled or terminated and all outstanding Letters of Credit are cancelled or have expired, then the liens, security interests, estates and rights granted by this Deed of Trust shall be terminated by Beneficiary by execution of a discharge of this Deed of Trust in recordable form and delivery of the discharge to Grantor or Grantor’s designee.

All of the foregoing being collectively referred to as the “**Property**”:

5

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- A. All that certain land located in Washington County, Tennessee and more particularly described in Exhibit A annexed hereto and made a part hereof (collectively, the “**Land**”).
- B. All the buildings, structures and improvements, now or at any time hereafter erected on the Land or any part thereof (collectively, the “**Buildings**”).
- C. All machinery, apparatus, equipment, personal property and fixtures of every kind and nature whatsoever now or hereafter located in, on or about any one or more of the Buildings or upon the Land, or attached to or used or useable in connection with the operation or maintenance of the Land or any one or more of the Buildings, or any part thereof, and now owned or hereafter acquired (collectively, the “**Building Equipment**”; the Land, the Buildings and the Building Equipment being hereafter sometimes collectively referred to as the “**Premises**”).
- D. All right, title and interest of Grantor, whether now owned or hereafter acquired, in and to any opened or proposed avenues, streets, roads, public places, sidewalks, alleys, strips or gores of land, in front of or adjoining the Land or any one or more of the Buildings and all easements, tenements, hereditament, appurtenances, rights and rights of way, public or private, pertaining or belonging to the Land or any one or more of the Buildings.

E. All insurance proceeds and all awards and payments, subject to applicable provisions of this Deed of Trust, including interest thereon, and the right to receive the same, which may be made in respect of all or any part of any of the Premises or any estate or interest therein or appurtenant thereto, as a result of damage to or destruction of all or any part of any of the Premises, the exercise of the right of condemnation or eminent domain, the closing of, or the alteration of the grade of, any street on or adjoining the Land, or any other injury to or decrease in the value of all or any part of any of the Premises.

F. All right, title and interest of Grantor in and to any and all present and future Leases (as defined in Paragraph 49) of all or any part of the Premises, and in and to the rents, issues and profits payable thereunder and cash or securities deposited thereunder as lessees' security deposits.

G. All franchises, permits, licenses and rights therein respecting the use, occupation and operation of the Premises or the activities conducted thereon or therein.

H. All right, title and interest of Grantor in and to any minerals, oil or gas located on, under or appurtenant to the Land.

I. All right, title and interest of Grantor in and to any tax refunds with respect to the Premises.

J. To the extent assignable, all of Grantor's interest in and to all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into,

6

pertaining to the construction, operation or management of the Premises and all right, title and interest of Grantor therein (collectively, the "Contracts").

K. All of Grantor's interest in and to all easements, rights, licenses, privileges and appurtenances including, without limitation, development and air rights now or hereafter belonging or in any way appertaining to the Land.

L. All of the estate and rights of Grantor now or hereafter acquired in and to land lying in streets, roads, ways and alleys, open or proposed, adjoining or contiguous to the Land.

M. The rents, issues and profits of any of the foregoing.

AND GRANTOR COVENANTS, REPRESENTS AND WARRANTS TO AND FOR THE BENEFIT OF TRUSTEE, BENEFICIARY AND THE SECURED PARTIES AS FOLLOWS:

1. Payment of Obligations and Performance of Covenants and Agreements Grantor shall pay or perform the Obligations when due in accordance with the provisions of the Credit Agreement, this Deed of Trust, and the other Credit Documents and perform the covenants and agreements of Grantor set forth in the Credit Documents.

2. Title to Property Grantor represents and warrants that (a) it owns good and marketable fee simple title to the Premises, (b) it has the good and unrestricted right, full power and lawful authority to make this Deed of Trust in accordance with the terms hereof, (c) Grantor has obtained any and all consents and approvals necessary or required for the making of this Deed of Trust, and the making of this Deed of Trust will not violate any contract or agreement to which Grantor is a party or by which the Property is bound, and (d) the Premises is free of all liens, encumbrances, adverse claims and other defects of title whatsoever except those items listed on Exhibit B annexed hereto and made a part hereof (collectively, the "Existing Liens") and Permitted Liens. Grantor does hereby and shall forever warrant and defend its title to and interest in the Property and the validity and priority of the lien of this Deed of Trust, subject to the Existing Liens and the Permitted Liens, to Beneficiary and the Secured Parties, their respective successors and assigns, against all claims and demands whatsoever of any Person or Persons. As of the date hereof, there are no defenses or offsets to this Deed of Trust or to the Obligations.

3. Intercreditor Agreement Notwithstanding anything herein to the contrary, and regardless of the priority of recordation of this Deed of Trust, the lien and security interests granted to the Beneficiary pursuant to this Deed of Trust and the exercise of any right or remedy by such Beneficiary hereunder are subject to the provisions of that certain Intercreditor Agreement, dated as of May 21, 2007 (the "Intercreditor Agreement"), by and among Grantor, Fisher, DD Finance, Holdings, Beneficiary, Term Administrative Agent, Credit Suisse, in its capacity as administrative agent under the ABL Loan Documents (as defined therein), and JPMorgan Chase Bank,

7

N.A., in its capacity as collateral agent under the ABL Loan Documents (together with its successors and assigns from time to time in such capacity, the "ABL Collateral Agent"). In the event of any conflict between the terms of the Intercreditor Agreement and this Deed of Trust, the terms of the Intercreditor Agreement shall govern.

4. Future Advances Without limiting the generality of any other provision hereof, or the terms and provisions of the Credit Agreement, the Obligations shall include, without limitation: (a) all existing indebtedness of Grantor to Beneficiary and/or any of the Secured Parties evidenced by any of the Credit Documents; (b) all future advances that may subsequently be made by Beneficiary and/or the Lenders as provided by any of the Credit Documents; and (c) all other indebtedness, if any, of Grantor to Beneficiary and/or any of the Secured Parties now due or to become due or hereafter contracted pursuant to any of the Credit Documents; provided that the maximum principal amount of all existing indebtedness, future advances, readvances of sums repaid and all other indebtedness secured hereby at any one time shall not exceed the total sum of \$7,000,000 (exclusive of interest thereon, attorneys' fees and costs, taxes, insurance premiums and all other obligations hereunder).

5. Insurance

(a) Grantor shall maintain in full force and effect with respect to the Premises the insurance as required by Section 5.5 of the Credit Agreement.

(b) In the event of a foreclosure of this Deed of Trust or other action or proceeding taken by Beneficiary pursuant to this Deed of Trust, the purchaser of the Premises shall succeed to all of the rights of Grantor, including any right to unearned premiums, in and to all policies of insurance which Grantor is required to maintain under Paragraph 5(a) and to all proceeds of such insurance.

6. Impositions

(a) Grantor shall pay, not later than the final delinquency date thereof, all real estate taxes, personal property taxes, assessments, water rates and sewer rents, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Land, and any other amounts which could be or become a lien upon or against the Property or any part thereof (collectively, the "Impositions"); provided, no such Imposition 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. Notwithstanding the foregoing, Grantor shall promptly, and in any

event on demand, pay such contested Imposition if at any time all or any part of the Property shall be in danger of being foreclosed, sold, forfeited, or otherwise lost or if such contest shall be discontinued. During the continuance of any Event of Default, upon demand by Beneficiary, Grantor will pay the whole of any assessment (an "Assessment") for local improvements which may be payable in installments, notwithstanding that such installments may not be due and payable at the time of such demand.

8

(b) Grantor shall, upon request of Beneficiary, deliver to Beneficiary, within twenty (20) days after the final delinquency date thereof of any Imposition or Assessment, receipts evidencing such payment or other proof of payment satisfactory to Beneficiary.

7. Maintenance and Alterations Grantor will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, the Premises and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

8. Leasing Grantor represents that there are no Leases now in effect. Grantor shall not enter into any Lease of all or any part of any of the Premises without in each instance obtaining Beneficiary's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Grantor shall deliver to Beneficiary a duplicate original of each Lease promptly after the execution thereof. At the option of Beneficiary, each Lease, and all renewals, replacements, extensions, and modifications thereof, and all rights of the tenant thereunder, shall be subject and subordinate to this Deed of Trust, and to each and every advance made or thereafter made hereunder or under the other Credit Documents and to all renewals, additions, amendments, supplements, modifications, consolidations, spreaders, replacements, and extensions of this Deed of Trust and shall contain provisions obligating the tenants thereunder to attorn to Beneficiary or any purchaser therefrom if Beneficiary or such purchaser succeeds to the interest of Grantor under such Lease. Grantor shall fully and promptly perform all of the obligations to be performed by the lessor under any and all Leases. Grantor shall enforce the performance and observance of each and every obligation to be performed or observed by the lessees under such Leases. Grantor shall give prompt notice to Beneficiary of (a) any notice received by Grantor of any default by the lessor under any Lease, (b) the commencement of any action or proceeding by any lessee the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable thereunder, (c) any notice of default given by Grantor to the lessee under any Lease, or (d) the interposition by any lessee of any defense or counterclaim in any action or proceeding brought by Grantor against such lessee; and Grantor will cause a copy of any process, pleading or notice received or served by Grantor in reference to any such action, defense or claim to be promptly delivered to Beneficiary. Grantor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall not mingle such funds with other funds. Grantor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

9. Recording, Filing and Other Fees Grantor shall pay all recording and filing fees, all recording taxes, and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of this Deed of Trust and any other Credit Documents, and shall reimburse Beneficiary and each of the Secured Parties on demand for all costs and expenses of any kind incurred by Beneficiary or any of the Secured Parties in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements). Grantor will, at any time on request of Beneficiary, execute or cause to be executed financing

9

statements, continuation statements, or the like, in respect of any Building Equipment. Grantor shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

10. Taxes Imposed on Beneficiary and the Secured Parties Grantor shall pay all taxes (except income, inheritance and franchise taxes, taxes on the receipt of debt service payments, or taxes in lieu of any of the foregoing) imposed on Beneficiary or any of the Secured Parties by reason of its ownership of this Deed of Trust or any of the other Credit Documents.

11. Compliance with Laws, etc. Grantor shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

12. Inspection Beneficiary and its authorized representatives shall have the right, at Beneficiary's option, at reasonable times during normal business hours and upon reasonable prior written notice, and as often as may be reasonably requested, to enter the Premises for the purpose of inspecting the same and any other Collateral.

13. Certificate of Grantor Grantor, upon request of Beneficiary or any of the Secured Parties, shall certify to Beneficiary or to such Secured Party or to any proposed assignee of or participant in this Deed of Trust, by an instrument in form reasonably satisfactory to Beneficiary or such Secured Party, duly acknowledged, the amount of the Obligations then owing, whether any offsets or defenses exist against payment or performance of all or any portion of the Obligations and anything else that Beneficiary or such Secured Party might reasonably request, within ten (10) days if the request is made personally, or within fifteen (15) days if the request is made by mail. Beneficiary, Secured Parties and any actual or proposed assignee of or participant in this Deed of Trust shall have the right to rely on such certification.

14. Condemnation Grantor shall give notice to Beneficiary upon Grantor receiving written notice of the commencement of any action or proceeding to take all or any part of the Premises by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Land. Beneficiary may participate in any such action or proceeding in the name of Beneficiary or, whenever necessary, in the name of Grantor, and Grantor shall deliver to Beneficiary such instruments as Beneficiary shall request to permit such participation. Grantor shall not settle any such action or proceeding or agree to accept any award or payment without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld, conditioned or delayed), and such award or payment and any interest thereon (hereinafter collectively called the "Award") shall be applied in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement.

(a) The application of any Award toward payment of the Obligations shall not be deemed a waiver by Beneficiary or any of the Secured Parties of its right to receive payment of the balance of the Obligations in accordance with the provisions of

10

the Credit Documents. Beneficiary shall have the right, but shall be under no obligation, to question the amount of the Award, and Beneficiary may accept the same without prejudice to the rights that Beneficiary may have to question such amount. In any such condemnation or eminent domain action or proceeding Beneficiary may be represented by attorneys selected by Beneficiary, and all sums paid by Beneficiary in connection with such action or proceeding (including, without limitation, reasonable attorneys' fees to the extent permitted by law) shall, on demand, be immediately due from Grantor to Beneficiary and the same shall be secured by this Deed of Trust.

(b) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, the unpaid principal portion of the Advances shall continue to bear interest at the rate payable pursuant to the applicable Credit Documents until the Award shall have been actually received by Beneficiary, and any reduction in the Obligations resulting from the application by Beneficiary of the Award shall be deemed to take effect only on the date of such receipt.

15. Restoration If the Buildings or the Building Equipment shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any taking in condemnation proceedings or the exercise of any right of eminent domain, Grantor shall promptly restore, replace or rebuild the same to as nearly as possible the

value, quality and condition they were in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by Beneficiary which approval shall not be unreasonably withheld or delayed, or apply the amount of any Award or insurance proceeds received with respect thereto, in each case in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement. Grantor shall give prompt notice to Beneficiary of any damage or destruction to the Buildings or Building Equipment by fire or other casualty, as well as the initiation of any condemnation or eminent domain proceeding affecting the same.

16. Default

(a) Any Event of Default under the Credit Agreement shall constitute an Event of Default hereunder and Beneficiary shall have all of the rights of the Administrative Agent and Collateral Agent under the Credit Agreement and all of the remedies hereunder.

(b) All notice and cure periods provided in the Credit Agreement shall run concurrently with any notice and cure periods provided under applicable law.

17. Beneficiary's Right to Perform Grantor's Covenants If there shall be an Event of Default, Beneficiary may, at its option, cure such Event of Default, and Beneficiary and its representatives shall have the right to enter the Premises to do so, and the amounts advanced by, and the other costs and expenses of, Beneficiary in curing such Event of Default, with interest from the time of the advances or payments at the Base

11

Rate plus the Applicable Margin, shall, on demand, be immediately due from Grantor to Beneficiary and shall be secured by this Deed of Trust.

18. Contemporaneous Mortgages THIS DEED OF TRUST IS MADE CONTEMPORANEOUSLY WITH TWO (2) OTHER MORTGAGES OR DEEDS OF TRUST OF EVEN DATE HEREWITH (as any of the same may be amended, supplemented, restated, severed, consolidated, spread, partially released, increased or otherwise modified from time to time, the "**Contemporaneous Mortgages**") GIVEN TO BENEFICIARY COVERING PROPERTY LOCATED IN THE STATES OF MAINE AND WISCONSIN. The Contemporaneous Mortgages secure the Obligations. Upon the occurrence of an Event of Default, Beneficiary may proceed under this Deed of Trust and/or the Contemporaneous Mortgages against any of such property and/or the Property in one or more parcels and in such manner and order as Beneficiary shall elect. Grantor hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, any right to have the property and/or the Property covered by the Contemporaneous Mortgages marshaled upon any foreclosure of this Deed of Trust or the Contemporaneous Mortgages.

19. Appointment of Attorney-in-Fact Grantor hereby constitutes and appoints Beneficiary the true and lawful attorney-in-fact, coupled with an interest, of Grantor and Grantor hereby confers upon Beneficiary the right, in the name, place and stead of Grantor, to demand, sue for, attach, levy, recover and receive after the occurrence and during the continuance of an Event of Default any of the Rents (as defined in Paragraph 49) and any premium or penalty payable upon the exercise by any third Person under any Lease of a privilege of cancellation originally provided in such Lease and to give proper receipts, releases and acquittances therefor and, after deducting actual out of pocket expenses of collection, to apply the net proceeds as provided in the Credit Agreement or otherwise reasonably determined by Beneficiary after consultation with Grantor; and Grantor does hereby authorize and direct any such third party to deliver such payment to Beneficiary in accordance with this Deed of Trust, and Grantor hereby ratifies and confirms all that its said attorney-in-fact, the Beneficiary, shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Beneficiary, and its successors and assigns, so long as any part of the Obligations other than any contingent indemnity and expense reimbursement obligations for which a claim has not been made remain unpaid or unperformed and undischarged.

Upon the occurrence and during the continuance of an Event of Default, Grantor hereby constitutes and appoints Beneficiary the true and lawful attorney-in-fact, coupled with an interest, of Grantor and Grantor hereby confers upon Beneficiary the right, in the name, place and stead of Grantor, to subject and subordinate at any time and from time to time any Lease to the lien, assignment and security interest of this Deed of Trust, or to any other mortgage, deed of trust, assignment or security agreement, or to any ground lease or surface lease, with respect to all or a portion of the Property, or to request or require such subordination, where such reservation, option or authority was reserved to Grantor under any such Lease, or in any case where Grantor otherwise would have the right, power or privilege so to do. The foregoing appointment is irrevocable and

12

continuing, and such rights, powers and privileges shall be exclusive in Beneficiary, and its successors and assigns, so long as any part of the Obligations other than any contingent indemnity and expense reimbursement obligations for which a claim has not been made remain unpaid or unperformed and undischarged.

20. Power of Sale Subject to the terms of the Credit Agreement, if an Event of Default shall occur and be continuing, Beneficiary shall have the right and option to proceed with foreclosure by directing Trustee, or Trustee's successors or substitutes in trust, to proceed with foreclosure and to sell, to the extent and in the manner permitted by applicable law, all or any portion of the Property at one or more sales, as an entirety or in parcels, at the door of the courthouse in Washington County, Tennessee, at which foreclosure sales are customarily held, at public auction, to the highest bidder for cash, free from equity of redemption, and any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions all of which are expressly waived by Grantor, after giving notice of the time, place and terms of such sale and of the Property to be sold, by advertising the sale of the property for twenty-one (21) days by three (3) weekly notices (the first of which must be at least twenty (20) days previous to such sale) in some newspaper published in the county and state where the Property is situated, which notice may be given before or after entry by the Trustee. The Trustee shall execute a conveyance to the purchaser in fee simple and deliver possession to the purchaser, which Grantor warrants shall be given without obstruction, hindrance or delay. Where the Property is situated in more than one county, notice as above provided shall be posted and filed in all such counties (if such notices are required by applicable law), and all such Property may be sold in any such county and the notice of such sale shall designate the county where such Property is to be sold. Nothing contained in this Paragraph 20 shall be construed so as to limit in any way Beneficiary's rights to sell the Property, or any portion thereof, by private sale if, and to the extent that, such private sale is permitted under the laws of the applicable jurisdiction or by public or private sale after entry of a judgment by any court of competent jurisdiction so ordering. Grantor hereby irrevocably appoints Beneficiary to be, upon the occurrence and during the continuance of an Event of Default, the attorney-in-fact of Grantor (coupled with an interest) and in the name and on behalf of Grantor to execute and deliver any deeds, transfers, conveyances, assignments, assurances and notices which Grantor ought to execute and deliver, and to do and perform any other acts or things which Grantor ought to do and perform under the covenants herein contained and, generally, to use the name of Grantor in the exercise of any of the powers hereby conferred on Beneficiary. At any such sale: (a) whether made under the power herein contained or any other legal enactment, or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Beneficiary to have physically present, or to have constructive possession of, the Property (Grantor hereby covenanting and agreeing to deliver to Beneficiary any portion of the Property not actually or constructively possessed by Beneficiary immediately upon demand by Beneficiary) and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale; (b) each instrument of conveyance executed by Beneficiary shall contain a general warranty of title, binding upon Grantor and its successors and assigns; (c) each and every recital contained in any instrument of conveyance made by Beneficiary shall conclusively

13

establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment and/or nonperformance of the Obligations and advertisement and conduct of such sale in the manner provided herein and otherwise required by applicable law; (d) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed; (e) the receipt of Beneficiary, or of such other party or officer making the sale, shall be a sufficient discharge to the purchaser for its purchase money and neither such purchaser nor its assigns or personal representatives shall thereafter be obligated to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or non-application thereof; (f) to the fullest extent permitted by applicable law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity (including any statutory or common law right of redemption, which is hereby waived to the fullest extent permitted by applicable law), in and to the property sold in any such event, and such sale shall be a perpetual bar, both at law and in equity, against Grantor and any and all other persons claiming by, through or under Grantor; and (g) to the extent and under such circumstances as are permitted by applicable law, Beneficiary may be a purchaser at any such sale, and shall have the right, after paying or accounting for all costs of said sale or sales, to credit the amount of the bid upon the amount of the Obligations in lieu of cash payment. Each remedy provided in this Deed of Trust is distinct from and cumulative with all other rights and remedies provided hereunder or afforded by applicable law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever.

21. Application of Proceeds of Foreclosure and Other Remedies All amounts received by Beneficiary pursuant to the exercise of remedies hereunder shall be applied first to expenses due Beneficiary or Trustee including, but not limited to, expenses of foreclosure and all expenses incurred in leasing the Property, retaining a managing agent therefor, or fulfilling Grantor's obligations under any Lease, including attorneys fees; second, to interest included in the Indebtedness; third, to principal included in the Indebtedness, in such order as Beneficiary may elect; and the surplus, if any, shall be paid to the party or parties entitled thereto.

22. Waiver of Redemption Rights Any sale of any or all of the Property pursuant to the power of sale or judicial sale provided for herein or in realization of the security interest granted herein shall be made free from the equity of redemption, statutory right of redemption, homestead, dower, curtesy, exemption rights, and all other rights and interests of Grantor, all of which are hereby expressly waived.

23. Judicial Foreclosure After the occurrence and during the continuance of an Event of Default, Beneficiary may institute an action of foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement hereof and realization on the Property or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire principal then outstanding under the Credit Documents, with interest thereon at the rate stipulated in the Credit Documents to the date of default and thereafter at the default interest rate specified in Section 2.9 of the Credit Agreement together with all other sums secured by this Deed of Trust, all costs of suit, including, without limitation, the expenses

14

which are described in Paragraphs 27 and 31, and interest at the default interest rate specified in Section 2.9 of the Credit Agreement on any judgment obtained by Beneficiary from and after the date of any judicial sale of any of the Property until actual payment. Upon any sale or sales made hereunder, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary and/or any of the Secured Parties may bid for and acquire any of the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Obligations the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust. Except as otherwise provided in the Credit Agreement, the proceeds of such sale shall be applied first to the payment of the costs and charges of such sale, including, without limitation, Beneficiary's attorneys' fees, (to the extent permitted by law), and second to the payment of the Obligations, the surplus money, if any, to be paid to the Person(s) legally entitled thereto (including Grantor, to the extent so entitled, if at all). Upon the request of Beneficiary and to the extent not prohibited by applicable law, Grantor shall execute and file with the clerk of the court a legally sufficient waiver of any statutory waiting period with respect to the execution of a judgment obtained by Beneficiary in connection with any foreclosure proceedings. The obligation of Grantor to so execute and file such waiver shall survive the termination of this Deed of Trust. Following a foreclosure sale, the sheriff shall deliver to the purchaser the sheriff's deed (and bill of sale as to any personalty) conveying the property so sold without any covenant or warranty, express or implied.

24. Sale in Parcels In the event of a foreclosure of this Deed of Trust or upon any sale under this Deed of Trust pursuant to judicial proceedings or otherwise, the Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Beneficiary in its sole discretion may select.

25. Notice Upon Acceleration Whenever Beneficiary in this Deed of Trust is given the option to accelerate the maturity of all or part of the Obligations upon the occurrence of an Event of Default, Beneficiary may, to the extent permitted by law, do so without prior notice or demand to or upon Grantor except as otherwise specifically provided herein.

26. Possession of Premises To the extent permitted by law, after the occurrence and during the continuance of an Event of Default, Beneficiary and its agents and any receiver appointed by a court are authorized to (a) take possession of the Premises, with or without legal action, and by force if necessary; (b) lease the Premises or make modifications to or cancel Leases; (c) maintain, repair, alter, and restore the Premises; (d) with or without taking possession, collect all Rents and profits payable under all Leases directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists under this Deed of Trust accompanied by a demand on such lessee for the payment to Beneficiary of all Rents due and to become due under its Lease, and Grantor FOR THE BENEFIT OF BENEFICIARY AND EACH SUCH LESSEE hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Beneficiary's statement of default and shall unequivocally be authorized to

15

pay said Rents to Beneficiary without regard to the truth of Beneficiary's statement of an Event of Default and notwithstanding notices from Grantor disputing the existence of an Event of Default such that the payment of rent by the lessee to Beneficiary pursuant to such a demand shall constitute performance in full of the lessee's obligation under the Lease for the payment of Rents by the lessee to Grantor; and (e) after deducting all costs of collection and administration expense, apply the net Rents and profits to the payment of Impositions, insurance premiums and all other carrying charges (including, without limitation, agents' compensation and fees and reasonable costs of counsel to the extent permitted by law, and receivers) and to the maintenance, repair or restoration of the Premises, or, except as otherwise provided in the Credit Agreement, on account and in reduction of the Obligations in such order and amounts as Beneficiary in Beneficiary's sole discretion may elect. Beneficiary shall be liable to account only for Rents and profits actually received by Beneficiary.

27. Expenses of Beneficiary and/or the Secured Parties All sums (including reasonable attorneys' fees and disbursements, to the extent permitted by law) paid by Beneficiary and/or any of the Secured Parties in connection with any litigation to prosecute or defend the rights and obligations created by this Deed of Trust, with interest thereon at the default interest rate specified in Section 2.9 of the Credit Agreement from the time of payment by Beneficiary and/or any of the Secured Parties shall, on demand, be immediately due from Grantor to Beneficiary and/or any such Secured Party and shall be added to and included in the Obligations and shall be secured by this Deed of Trust.

28. Grantor's Waivers

(a) Grantor, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, (i) the benefit of any and all valuation and appraisal laws, (ii) any right of redemption whether statutory or otherwise, in respect of the Property, (iii) any applicable homestead or dower laws, (iv) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of court in the nature of any one or more of them, (v) any right to have any of the Property marshaled upon foreclosure of this Deed of Trust, (vi) the right to interpose any set-off, recoupment, counterclaim or cross-claim in any litigation in any court with respect to, in connection with, or arising out of this Deed of Trust or any of the other Credit Documents unless such set-off,

recoupment, counterclaim or cross-claim could not, by reason of the applicable Federal or State procedural laws, be interposed, pleaded or alleged in any other action, and (vii) trial by jury in connection with any litigation arising out of this Deed of Trust or any of the other Credit Documents and any right it may have to claim or recover in any such litigation any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages.

(b) Beneficiary, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, trial by jury in connection with any litigation arising out of this Deed of Trust or any of the other Credit Documents.

16

29. Partial Foreclosure Beneficiary may from time to time, if permitted by law, take action to recover any sums, whether interest, principal or any other sums, required to be paid under this Deed of Trust or any other Credit Document as the same become due, without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Grantor existing when such earlier action was commenced. Beneficiary may also foreclose this Deed of Trust for any sums due under this Deed of Trust or any other Credit Document and the lien of this Deed of Trust shall continue to secure the balance of the Obligations due.

30. No Waiver; Rights Cumulative No failure or delay on the part of Beneficiary or any of the Secured Parties 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 Beneficiary and each of the Secured Parties 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.

31. Attorneys' Fees If this Deed of Trust shall be foreclosed, or if any of the Credit Documents is placed in the hands of an attorney for collection or is collected through any court, including any bankruptcy court, there shall be included in the computation of the sums secured hereby, to the extent permitted by law, the amount of a reasonable fee for the services of the attorney retained by Beneficiary in the foreclosure action or proceeding, and all disbursements, costs, allowances and additional allowances provided by law.

32. Interest After Maturity The Obligations secured by this Deed of Trust shall bear interest from and after maturity, whether or not resulting from acceleration, at the default interest rate specified in Section 2.9 of the Credit Agreement, but this shall not constitute an extension of time for payment of the Obligations.

33. No Credit for Taxes Grantor shall not claim or demand or be entitled to any credit or credits on account of any of the sums secured hereby by reason of the Impositions assessed against all or any part of the Property or for any payments made on account thereof. No deductions shall be made or claimed from the taxable value of all or any part of the Premises by reason of this Deed of Trust.

34. Liens This Deed of Trust is and shall be maintained as a valid first lien on the Property subject only to any encumbrances created pursuant to the Credit Documents and the Existing Liens and the Permitted Liens, if any. Notwithstanding any provision in the Credit Documents to the contrary, Grantor shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the Rents, issues and profits therefrom, any lien, charge, mortgage,

17

deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien"), whether senior or junior in lien to this Deed of Trust, other than the lien of (i) this Deed of Trust and (ii) the Permitted Liens (including 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; provided, however, that Grantor shall give Beneficiary at least twenty (20) days prior written notice of any Permitted Lien described in the parenthetical to clause (ii) above which is to be created after the date hereof together with a reasonably detailed description thereof; and provided, further, that nothing contained in this Paragraph shall require Grantor to pay any real estate taxes or other Impositions prior to the time when same are required to be paid under this Deed of Trust. Grantor will keep and maintain all of the Premises free from all liens of Persons supplying labor or materials relating to the construction, alteration, modification or repair of the Premises. If any such lien shall be filed against any of the Property, Grantor agrees to discharge the same of record (by payment, bonding or otherwise) within 10 days of notice of the filing thereof. No financing statement, conditional bill of sale or chattel mortgage shall be made or filed against any Building Equipment without the prior consent of Beneficiary and if at any time there should be any (with or without the consent of Beneficiary), then upon the occurrence and during the continuance of an Event of Default, all right, title and interest of Grantor in and to all deposits and payments made thereon are hereby assigned to Beneficiary.

35. Change in Taxation In the event of the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (a) deducting or allowing Grantor to deduct from the value of the Property for the purpose of taxation any lien or security interest thereon, (b) imposing, modifying or deeming applicable any reserve or special requirement against deposits in or for the account of, or loans by, or other liabilities of, or other assets held by Beneficiary or any of the Secured Parties, or (c) subjecting Beneficiary or any of the Secured Parties to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Deed of Trust, the Obligations, Beneficiary or any of the Secured Parties, and the result is to increase the taxes imposed upon or the cost to Beneficiary or any of the Secured Parties of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder or under the other Credit Documents, then, and in any such event, Grantor shall, on demand, pay to Beneficiary for the account of Beneficiary or any of the Secured Parties, as the case may be, such additional amounts as may be required to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful or would constitute usury under applicable law, then Beneficiary may, at its option, require Grantor to make a partial repayment of the Obligations in an amount equal to the then value of the Premises.

36. Assignment of Leases and Rents Grantor absolutely and unconditionally assigns to Beneficiary the Rents, issues and profits of the Premises as further security for the payment of the Obligations and Grantor grants to Beneficiary during the existence of an Event of Default the right to enter the Premises for the purpose of collecting the same and to let the Premises, or any part thereof, and, except as

18

otherwise provided in the Credit Agreement, to apply said Rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the payment in full of the Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit. Beneficiary hereby waives the right to enter the Premises for the purpose of collecting said Rents, issues and profits, and Grantor shall be entitled to collect, receive and use said Rents, issues and profits, until the occurrence and during the continuance of an Event of Default. During the continuance of any Event of Default, the right of Grantor to collect, receive and use said Rents, issues and profits, shall be revoked forthwith. Further, from and after delivery of written notice of such revocation, constructive possession of the Premises shall be vested in Beneficiary, and this assignment shall be activated and perfected. Notwithstanding the foregoing, this assignment shall also be activated and perfected upon Beneficiary's exercising, upon the occurrence and during the continuance of an Event of Default, any of the

following remedies pursuant to this Deed of Trust: (i) taking actual possession of the Premises; (ii) moving or applying for the appointment of a receiver; (iii) filing or commencing an action to foreclose this Deed of Trust; or (iv) collecting the Rents directly from the tenant(s). Grantor shall, from time to time after request by Beneficiary, execute, acknowledge and deliver to Beneficiary, in form reasonably satisfactory to Beneficiary, separate assignments effectuating the foregoing. Neither Beneficiary nor the Secured Parties shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Grantor under any Lease or other agreement affecting all or any part of the Premises, and Grantor hereby agrees to indemnify Beneficiary and the Secured Parties for and hold them harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Premises upon Beneficiary or the Secured Parties, nor make Beneficiary or the other Secured Parties liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Premises resulting in injury, death or property damage. In addition, after the occurrence and during the continuance of an Event of Default and following the giving of notice to Grantor, Grantor will pay monthly in advance to Beneficiary, or to any receiver appointed to collect said Rents, issues and profits, the fair and reasonable rental value for the use and occupancy of the Premises or of such part thereof as may be in the possession of Grantor, and upon default in any such payment will vacate and surrender the possession thereof to Beneficiary or to such receiver, and in default thereof may be evicted by summary or other proceedings.

37. Security Agreement It is the intention of the parties hereto that this instrument shall constitute a Security Agreement and a Financing Statement within the meaning of the Uniform Commercial Code as enacted in the state in which the Land is located with respect to the personalty and fixtures comprising a part of the Property, and that a security interest shall attach thereto for the benefit of Beneficiary, as secured party, to further secure the Obligations. Grantor hereby authorizes Beneficiary to file financing and continuation statements with respect to such collateral in which Grantor has a mortgageable interest, without the signature of Grantor whenever lawful, and upon request, Grantor shall promptly execute financing and continuation statements in form satisfactory to Beneficiary to further evidence and secure Beneficiary's interest in such

19

collateral, and shall pay all filing fees in connection therewith. In the event of the occurrence and during the continuance of an Event of Default, Beneficiary, pursuant to the applicable provision of the Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that in the event Beneficiary elects to proceed with respect to collateral constituting personalty or fixtures separately from the real property, without demand, notice or advertisement whatsoever except that where an applicable statute requires reasonable notice of sale or the dispositions, the giving of ten (10) days' notice by Beneficiary to Grantor, shall be deemed to be reasonable notice thereof and Grantor waives any other notice with respect thereto.

38. No Release Neither Grantor nor any other Person now or hereafter obligated for the payment or performance of all or any portion of the Obligations shall be released from paying such Obligations and the lien of this Deed of Trust shall not be affected by reason of (a) the failure of Beneficiary or any of the Secured Parties to comply with any request of Grantor, or of any other Person so obligated, to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any of the covenants and agreements of Grantor under the Credit Documents, (b) the release, regardless of consideration, of the whole or any part of the security held for the Obligations, (c) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or performance of all or any portion of the Obligations, or (d) any agreement or stipulation extending the time of payment or modifying the terms of any of the Credit Documents, and in the event of such agreement or stipulation, Grantor and all such other Persons shall continue to be liable under the Credit Documents, as amended by such agreement or stipulation, unless expressly released and discharged in writing by Beneficiary and the Secured Parties.

39. Notices All notices, consents and other communications provided for herein shall be sent to such Person's address as follows (or to such other address indicated in an unrevoked written notice from such Person given in accordance the terms of this Paragraph):

(a) if to Grantor, Douglas Dynamics, L.L.C., 7777 North 73rd Street, Milwaukee, WI 53223, Attention: Chief Executive Officer and President, Telecopy No.: (414) 354-8448, with a copy to Aurora Capital Group, 10877 Wilshire Boulevard, Suite 2100, Los Angeles, CA 90024, Attention: Secretary, Douglas Dynamics Holdings, Inc., Telecopier No.: (310) 824-2791, with a copy to Gibson, Dunn & Crutcher LLP, 333 S. Grand Avenue, Los Angeles, CA 90071, Attention: Jeff R. Hudson, Esq., Telecopy No.: 213-229-6332

(b) if to Beneficiary or Collateral Agent, at Credit Suisse, Cayman Islands Branch, Eleven Madison Avenue, New York, NY 10010, Attention: Ian Nalitt, Telecopy No.: (212) 325-8615, with a copy to Skadden Arps Slate Meagher & Flom

20

LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071-3144, Attention: David Kitchen, Esq., Telecopy No.: (213) 621-5280; and

(c) if to any of the Secured Parties, at the address set forth below such Secured Party's name on the signature pages of the Credit Agreement.

Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, 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 Beneficiary shall be effective until received by Beneficiary.

40. Severability In case any provision in or obligation hereunder 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.

41. Intentionally Deleted

42. Indemnification Against Liabilities Grantor will defend, indemnify, pay and hold harmless Beneficiary and the Secured Parties and their respective officers, partners, directors, trustees, employees, agents and Affiliates of Beneficiary and each of the Secured Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Beneficiary and any of the Secured Parties by reason of (a) ownership of a mortgagee's/beneficiary's or participating lender's interest in the Property, (b) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, unless due to the willful misconduct of Beneficiary or such Secured Party, (c) any use, nonuse or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Grantor to perform or comply with any of the terms of this Deed of Trust, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof made or suffered to be made by or on behalf of Grantor, (f) any negligence or tortious act on the part of Grantor or any of its agents, contractors, lessees, licensees or invitees, or (g) any work in connection with any alterations, changes, new construction or demolition of the Premises. All amounts payable to Beneficiary and the Secured Parties under this Paragraph shall be payable promptly on demand and shall be deemed indebtedness and Obligations secured by this Deed of Trust and any such amounts shall bear interest at the default interest rate specified in Section 2.9 of the Credit Agreement from the date of such demand. In case any action, suit or proceeding is brought against Grantor, Beneficiary and/or any of the Secured Parties by reason of any such occurrence, Grantor, upon request of Beneficiary or any of the Secured Parties will, at Grantor's expense, resist and defend such action,

21

suit or proceeding or cause the same to be resisted or defended by counsel designated by Beneficiary or such Secured Party and approved by Grantor.

43. No Oral Changes This Deed of Trust and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

44. Governing Law THE PROVISIONS OF THIS DEED OF TRUST REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS DEED OF TRUST AND THE RIGHTS AND OBLIGATIONS OF GRANTOR AND BENEFICIARY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPALS THEREOF.

45. Construction This Deed of Trust shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

46. Headings Paragraph 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.

47. After Acquired Property All property of every kind which is hereafter acquired by Grantor which, by the terms hereof, is required or intended to be subjected to the lien of this Deed of Trust shall, immediately upon the acquisition thereof by Grantor, and without any further giving of a deed of trust and/or mortgage, conveyance, assignment or transfer, become subject to the lien of this Deed of Trust.

48. Further Assurances Grantor shall execute, acknowledge and deliver to Beneficiary any documents and instruments which Beneficiary may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting of Beneficiary's security and rights under this Deed of Trust, in form and substance reasonably satisfactory to Beneficiary.

49. Definitions The following terms shall, for all purposes of this Deed of Trust, have the respective meanings herein specified unless the context otherwise requires and such meanings shall apply equally to the singular and plural forms of such defined terms unless a definition is provided herein for both the singular and plural form of such defined term:

(a) **"Lease"** shall mean every lease or occupancy agreement for the use or hire of all or any portion of the Premises, which shall be in effect at the date hereof or which shall hereafter be entered into by or on behalf of Grantor.

22

(b) **"Rents"** shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources arising from or attributable to the Land and the Building, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property, and proceeds, if any, from business interruption or other loss of income insurance.

50. Successors and Assigns The terms, covenants and provisions of this Deed of Trust shall apply to and be binding upon Grantor and the successors and assigns of Grantor and shall inure to the benefit of Beneficiary, the Secured Parties and their respective successors and assigns. All grants, covenants, terms, provisions, and conditions contained herein shall run with the Land.

51. Credit Agreement In the event of any inconsistency or conflict between the terms and provisions of the Credit Agreement and this Deed of Trust, the terms and provisions of the Credit Agreement shall control.

52. Trustee The Trustee named herein shall be clothed with full power to act when action hereunder shall be required, and to execute any conveyance of the Property. In the event that the substitution of a Trustee shall become necessary for any reason, the substitution of one trustee in the place of those or any of those named herein shall be sufficient; however, more than one Trustee may be named. The term "Trustee" shall be construed to mean "Trustees" whenever the sense requires. Trustee is hereby released from all obligations imposed by statute which can be waived. The necessity of the Trustee herein named, or any successor in trust, making oath or giving bond, is expressly waived.

The Trustee, or any one acting in Trustee's stead, shall have, in Trustee's discretion, authority to employ all proper agents and attorneys in the execution of this Deed of Trust and/or in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the Property, should any be realized; and if no sale be made or if the proceeds of sale be insufficient to pay the same, then Grantor hereby undertakes and agrees to pay the cost of such services rendered to said Trustee. The Trustee may rely on any document believed by him in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon.

If the Trustee shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto, or the interest of the Trustee or Beneficiary under this Deed of Trust, the Trustee and Beneficiary shall be reimbursed by

23

Grantor, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by Trustee or either of them in any such case, and the same shall be secured hereby as a further charge and lien upon the Property.

In the event of the death, refusal, or of inability for any cause, on the part of the Trustee named herein, or of any successor trustee, to act at any time when action under the foregoing powers and trust may be required, or for any other reason satisfactory to Beneficiary, Beneficiary is authorized, either in its own name or through an attorney or attorneys in fact appointed for that purpose, by written instrument duly registered, to name and appoint a successor or successors to execute this Deed of Trust, such appointment to be evidenced by writing, duly acknowledged; and when such writing shall have been registered, the substituted trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named herein and such like power of substitution shall continue so long as any part of the debt secured hereby remains unpaid.

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IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed under seal as of the day and year first above written.

Grantor:

DOUGLAS DYNAMICS, L.L.C.

By:

Name:

Title:

STATE OF)
COUNTY OF)

Before me, _____, a Notary Public of the State and County aforesaid, personally appeared _____, with whom I am personally acquainted, and who, upon oath, acknowledged himself/herself to be _____ of DOUGLAS DYNAMICS, L.L.C., a Delaware limited liability company, and that he/she as such _____, being authorized so to do, executed the this instrument on behalf of said DOUGLAS DYNAMICS, L.L.C..

Witness my hand and seal, at office in _____, _____, this the _____ day of May, 2007.

NOTARY PUBLIC

My Commission Expires: _____

Exhibit A

Description of the Land

SITUATE, lying and being in the 9th Civil District of Washington County, Tennessee, and being more particularly described as follows, to-wit:

BEGINNING at an iron rod in the southwesterly right of way line of Riverview Drive (Tennessee State Route 2601), corner to City of Johnson City (Deed Book 284, page 241); thence leaving Riverview Drive and with the line of the City of Johnson City, S. 41° 19' 00" W., 848.50 feet to an iron rod, corner to General Shale Products Corp. (Deed Book 693, page 422); thence with General Shale's line, the following six courses and distances: N. 34° 22' 00" W., 153.40 feet to an iron rod; N. 39° 29' 00" E., 166.20 feet to an iron rod; N. 37° 16' W., 16.0 feet to an iron rod; N. 47° 32' 07" W., 548.35 feet to a concrete monument; N. 37° 10' 39" W., 378.19 feet to iron rod; and N. 26° 38' 07" W., 334.55 feet to a concrete monument, corner to City of Johnson City (Deed Book 703, page 113); thence with the line of the City of Johnson City, the following two courses and distances: N. 75° 20' 06" E., 291.24 feet to a concrete monument, and N. 19° 11' 00" W., 175.82 feet to a concrete monument, corner to Guy and Mae Erwin (Deed Book 469, page 25); thence with Erwin's line, N. 55° 25' 00" E., 309.91 feet to a concrete monument located in the southwesterly right of way line of Riverview Drive (Tennessee State Route 2601); thence with the southwesterly right of way line of Riverview Drive, the following five courses and distances: S. 37° 32' 10" E., 333.17 feet to an iron rod; S. 41° 20' 23" E., 223.32 feet to an iron rod; S. 36° 55' 23" E., 504.89 feet to a point; S. 41° 05' 23" E., 97.0 feet to an iron rod and S. 51° 46' 23" E., 174.58 feet to the point of BEGINNING, containing 21.599 acres, more or less, according to a map entitled "E. G. Smith Construction Products, Inc." dated September 29, 1992, prepared by Steven C. Lyons, TRLS No. 1608, 116 Free Hill Road, Gray, TN 37615.

AND BEING the same property conveyed to New DD, LLC from Douglas Dynamics, L.L.C. by Special Warranty Deed dated March 26, 2004, recorded in Roll 382, Image 2259, in the Register's Office for Washington County, Tennessee, to which reference is here made. See Certificate of Amendment amending the name from New DD, LLC to Douglas Dynamics, LLC of record in Roll 423, Image 2332, in the aforesaid Register's Office.

Schedule B

Existing Liens

1. All those exceptions to title set forth on Schedule B to Loan Policy No. 15341 issued by Lawyers Title Insurance Corporation.
2. Those liens and security interests granted in favor of the ABL Collateral Agent disclosed by the Intercreditor Agreement.

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)):	\$

K-1

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)):	\$

K-2

III. Restricted Payment Amount

(a)	Restricted Payment EBITDA:	\$
(b)	product of 2.0 multiplied by Cumulative Interest Expense:	\$
(c)	Item (a) minus 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) minus 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.

K-3

EXHIBIT L

INTERCREDITOR AGREEMENT

L-1

EXECUTION VERSION

INTERCREDITOR AGREEMENT

by and among

DOUGLAS DYNAMICS, L.L.C.
DOUGLAS DYNAMICS FINANCE COMPANY
FISHER, LLC
DOUGLAS DYNAMICS HOLDINGS, INC.

The Grantors from Time to Time Parties Hereto,

CREDIT SUISSE, CAYMAN ISLANDS BRANCH,

as the Administrative Agent under the ABL Loan Documents,
as the Administrative Agent and the Collateral Agent under the Term Loan Documents,

and

JPMORGAN CHASE BANK, N.A.,
as the Collateral Agent under the ABL Loan Documents

Dated as of May 21, 2007

Intercreditor Agreement

TABLE OF CONTENTS

		<u>Page</u>
	ARTICLE I	
	DEFINITIONS	
SECTION 1.1	Defined Terms	2
SECTION 1.2	Terms Generally	13
	ARTICLE II	
	PRIORITY OF LIENS; ETC.	
SECTION 2.1	Subordination of Liens; Etc	13
SECTION 2.2	Prohibition on Contesting Liens	15
SECTION 2.3	No New Liens	15
SECTION 2.4	Similar Liens and Agreements	16
	ARTICLE III	
	ENFORCEMENT	
SECTION 3.1	Exercise of Remedies	16
	ARTICLE IV	
	PAYMENTS	
SECTION 4.1	Application of Proceeds	21
SECTION 4.2	Payments Over	22
	ARTICLE V	
	OTHER AGREEMENTS	
SECTION 5.1	Releases	23

SECTION 5.2	Insurance - ABL Priority Collateral — Settlement Prior to Discharge of ABL Obligations	24
SECTION 5.3	Amendments to Credit Documents	25
SECTION 5.4	Amendments to Security Documents	26
SECTION 5.5	Rights As Unsecured Creditors	28
SECTION 5.6	Bailee for Perfection	28
SECTION 5.7	When Discharge of Obligations Deemed to Not Have Occurred	30
SECTION 5.8	Option to Purchase	31

i

SECTION 5.9	Entry Upon Premises by the ABL Collateral Agent and the ABL Creditors	32
SECTION 5.10	Rights under Permits and Licenses	34

ARTICLE VI

INSOLVENCY OR LIQUIDATION PROCEEDINGS

SECTION 6.1	Finance and Sale Issues	34
SECTION 6.2	Relief from the Automatic Stay	37
SECTION 6.3	Adequate Protection	37
SECTION 6.4	No Waiver; Voting Rights	38
SECTION 6.5	Preference Issues	38
SECTION 6.6	Post-Petition Interest	39
SECTION 6.7	Voting for Plan of Reorganization	40

ARTICLE VII

RELIANCE; WAIVERS; ETC.

SECTION 7.1	Reliance	40
SECTION 7.2	No Warranties or Liability	40
SECTION 7.3	No Waiver of Lien Priorities	41
SECTION 7.4	Waiver of Liability; Indemnity	44
SECTION 7.5	Obligations Unconditional	45

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1	Conflicts	46
SECTION 8.2	Effectiveness; Continuing Nature of this Agreement; Severability	46
SECTION 8.3	Amendments; Waivers	47
SECTION 8.4	Information Concerning Financial Condition of the Grantors and their Subsidiaries	48
SECTION 8.5	Subrogation	48
SECTION 8.6	Reserved	49
SECTION 8.7	SUBMISSION TO JURISDICTION; WAIVERS	49
SECTION 8.8	Notices	50
SECTION 8.9	Further Assurances	50
SECTION 8.10	APPLICABLE LAW	50
SECTION 8.11	Binding on Successors and Assigns	50
SECTION 8.12	Specific Performance	50
SECTION 8.13	Headings	51
SECTION 8.14	Counterparts	51
SECTION 8.15	Authorization	51
SECTION 8.16	No Third Party Beneficiaries; Effect of Agreement	51

ii

SECTION 8.17	Provisions Solely to Define Relative Rights	51
SECTION 8.18	Grantors; Additional Grantors	51

iii

INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT, dated as of May 21, 2007, and entered into by and among Douglas Dynamics, L.L.C., a Delaware limited liability company (“Douglas”), Douglas Dynamics Finance Company, a Delaware corporation (“DD Finance”) and Fisher, LLC, a Delaware limited liability company (“Fisher”, and collectively with Douglas and DD Finance, the “ABL Borrower”), Douglas Dynamics Holdings, Inc., a Delaware corporation (“Holdings”), each other Grantor (as hereinafter defined) from time to time party hereto, CREDIT SUISSE, acting through a Cayman Island Branch (“Credit Suisse”), in its capacity as administrative agent under the ABL Loan Documents (as defined below) (together with its successors and assigns from time to time in such capacity (the “ABL Administrative Agent”), JPMorgan Chase Bank, N.A. (“JPMCB”) in its capacity as collateral agent under the ABL Loan Documents (together with its successors and assigns from time to time in such capacity, the ABL Collateral Agent”), Credit Suisse, in its capacities as administrative agent (together with its successors and assigns from time to time in such capacity the Term Administrative Agent) and collateral agent under the Term Loan Documents (as defined below) (together with its successors and assigns from time to time in such capacity, the “Term Collateral Agent”). Capitalized terms used herein but not otherwise defined herein have the meanings set forth in the ABL Credit Agreement or the Term Credit Agreement, as context requires.

RECITALS

WHEREAS, the ABL Borrower, Holdings, the lenders party thereto, the ABL Administrative Agent and the ABL Collateral Agent have entered into that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented, modified and/or Refinanced from time to time in accordance with the terms hereof and thereof, the “ABL Credit Agreement”);

WHEREAS, Douglas (the “Term Borrower”), Holdings, the Subsidiary Guarantors, the lenders party thereto, the Term Collateral Agent and the Term Administrative Agent have entered into that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented, modified and/or Refinanced from time to time in accordance with the terms hereof and thereof, the “Term Credit Agreement”);

WHEREAS, the obligations of the ABL Borrower and the other Grantors under the ABL Loan Documents and all ABL Hedging Obligations will be secured by substantially all the property and assets of the ABL Borrower and the other Grantors, respectively, pursuant to the terms of the ABL Security Documents;

WHEREAS, the obligations of the Term Borrower and the other Grantors under the Term Loan Documents will be secured by substantially all the property and assets of the Term Borrower and the other Grantors, respectively, pursuant to the terms of the Term Security Documents;

WHEREAS, the ABL Loan Documents and the Term Loan Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral;

WHEREAS, in order to induce the ABL Collateral Agent and the ABL Creditors to consent to the Grantors incurring the Term Obligations and to induce the ABL Creditors to extend credit and other financial accommodations and lend monies to or for the benefit of the ABL Borrower or any other Grantor, the Term Collateral Agent on behalf of the Term Creditors (and each Term Creditor by its acceptance of the benefits of the Term Security Documents) has agreed to the lien subordination, intercreditor and other provisions set forth in this Agreement;

WHEREAS, in order to induce the Term Collateral Agent and the Term Creditors to consent to the Grantors incurring the ABL Obligations and to induce the Term Creditors to extend credit and other financial accommodations and lend monies to or for the benefit of Douglas or any other Grantor, the ABL Collateral Agent on behalf of the ABL Creditors (and each ABL Creditor by its acceptance of the benefits of the ABL Security Documents) has agreed to the lien subordination, intercreditor and other provisions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Defined Terms. As used in the Agreement, the following terms shall have the following meanings:

“ABL Administrative Agent” has the meaning set forth in the preamble hereto.

“ABL Banking Services Agreement” shall mean any Banking Services Agreement (as defined in the ABL Credit Agreement) entered into by a Grantor and any ABL Banking Services Provider (or any Person who was an ABL Banking Services Provider as of the date such Banking Services Agreement was entered into).

“ABL Banking Services Provider” shall mean, with respect to any Banking Services Agreement, any counterparty thereto that, at the time such Banking Services Agreement was entered into or as of the date of this Agreement, was an ABL Administrative Agent, ABL Collateral Agent or ABL Lender or an Affiliate of an ABL Administrative Agent, ABL Collateral Agent or ABL Lender.

“ABL Banking Services Obligations” of the Grantors means any and all obligations of the Grantors, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor and the payment of interest and other amounts that would

accrue and become due but for the commencement of any Insolvency or Liquidation Proceeding at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such Insolvency or Liquidation Proceeding) in connection with Banking Services Agreement (as defined in the ABL Credit Agreement).

“ABL Borrower” shall mean collectively, Douglas, DD Finance and Fisher, as borrowers under the ABL Credit Agreement.

“ABL Collateral Agent” has the meaning provided in the Preamble hereto.

“ABL Credit Agreement” has the meaning set forth in the recitals hereto.

“ABL Creditor Post-Petition Financing” has the meaning set forth in Section 6.1(a)(i) hereto.

“ABL Creditors” shall mean, at any relevant time, the holders of ABL Obligations at such time, including, without limitation, the ABL Lenders, the ABL Banking Services Providers, the ABL Hedge Providers, the ABL Collateral Agent, the ABL Administrative Agent and the other agents under the ABL Credit Agreement.

“ABL Documents” shall mean and include the ABL Loan Documents, the ABL Banking Services Agreements, and the ABL Hedge Agreements.

“ABL Guaranty” means the guaranty pursuant to Section VII of the ABL Credit Agreement.

“ABL Hedge Agreement” shall mean any Hedge Agreement (as defined in the ABL Credit Agreement) entered into by a Grantor and any ABL Hedge Provider (or any Person who was an ABL Hedge Provider as of the date such Hedge Agreement was entered into).

“ABL Hedge Provider” shall mean, with respect to any Hedge Agreement, any counterparty thereto that, at the time such Hedge Agreement was entered into or as of the date of this Agreement, was an ABL Administrative Agent, ABL Collateral Agent or ABL Lender or an Affiliate of an ABL Administrative Agent, ABL Collateral Agent or ABL Lender.

“ABL Hedging Obligations” shall mean (i) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all

obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due) and liabilities (including, without limitation, indemnities, fees and interest thereon and including the payment of interest and other amounts that would accrue and become due but for the commencement of any Insolvency or Liquidation Proceeding at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such Insolvency or Liquidation Proceeding) of each Grantor owing to the ABL Hedge Providers, now existing or hereafter incurred under, arising out of or in connection with each ABL Hedge Agreement (including all such obligations and indebtedness under any guarantee to which each Grantor is a party) and (ii) the due performance and compliance by each Grantor with the terms, conditions and agreements of each ABL Hedge Agreement.

3

“ABL Lenders” shall mean the “Lenders” under, and as defined in, the ABL Credit Agreement; provided that the term “ABL Lender” shall in any event include each letter of credit issuer and each swingline lender under the ABL Credit Agreement.

“ABL Loan Commitments” shall mean the loan commitments under the ABL Credit Agreement.

“ABL Loan Documents” shall mean the ABL Credit Agreement and the Credit Documents (as defined in the ABL Credit Agreement) and each of the other agreements, documents and instruments executed or delivered at any time in connection therewith (including any intercreditor or joinder agreement among holders of ABL Obligations but excluding ABL Hedge Agreements), to the extent such are effective at the relevant time, as each may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

“ABL Mortgages” shall mean a collective reference to each mortgage, deed of trust and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any ABL Obligations or under which rights or remedies with respect to any such Liens are governed.

“ABL Obligations” shall mean (i) all Obligations outstanding under the ABL Credit Agreement and the other ABL Loan Documents, (ii) all ABL Hedging Obligations and (iii) all ABL Banking Services Obligations. “ABL Obligations” shall in any event include: (a) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding (and the effect of provisions such as Section 502(b)(2) of the Bankruptcy Code), accrue) after commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant ABL Document, whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding, (b) any and all fees and expenses (including attorneys’ and/or financial consultants’ fees and expenses) incurred by the ABL Collateral Agent, the ABL Administrative Agent and the ABL Creditors after the commencement of an Insolvency or Liquidation Proceeding, whether or not the claim for fees and expenses is allowed under Section 506(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or Bankruptcy Law as a claim in such Insolvency or Liquidation Proceeding and (c) all obligations and liabilities of each Grantor under each ABL Document to which it is a party which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due. The ABL Obligations shall not include (x) principal of Loans or stated amounts of Letters of Credit in excess of the Maximum ABL Principal Amount as in effect at the time incurred or (y) any amount in clauses (a) through (c) of the preceding sentence incurred in connection with the enforcement of the excess amounts referred to in preceding clause (x).

“ABL Priority Collateral” means all Collateral consisting of the following:

- (a) all Accounts;
- (b) all Inventory;

4

(c) all Deposit Accounts and Securities Accounts and all cash, checks and other property held therein or credited thereto (other than identifiable cash proceeds of Term Priority Collateral held therein);

(d) to the extent evidencing, governing, securing or otherwise related to the items referred to in the preceding clauses (a) through (c), all General Intangibles, Chattel Paper, Instruments, and Documents, provided that to the extent any of the foregoing also relates to Term Priority Collateral, only that portion related to the items referred to in the preceding clauses (a) through (c) shall be included in the ABL Priority Collateral;

(e) to the extent evidencing, governing, securing or otherwise related to the items referred to in the preceding clauses (a) through (d), all Supporting Obligations, provided that to the extent any of the foregoing also relates to Term Priority Collateral, only that portion related to the items referred to in the preceding clauses (a) through (d) shall be included in the ABL Priority Collateral;

(f) all books and records relating to the foregoing; and

(g) all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing.

All capitalized terms used in this definition and not defined elsewhere in this Agreement have the meanings assigned to them in the UCC.

“ABL Recovery” has the meaning set forth in Section 6.5(a) hereto.

“ABL Required Lenders” shall mean the “Requisite Lenders” under, and as defined in, the ABL Credit Agreement.

“ABL Secured Parties” shall mean, at any time, the ABL Collateral Agent, the ABL Administrative Agent, each ABL Creditor, the beneficiaries of each indemnification obligation undertaken by any Grantor under any ABL Document and each other holder of, or obligee in respect of, any ABL Obligations outstanding at such time.

“ABL Security Documents” shall mean the Collateral Documents (as defined in the ABL Credit Agreement), and any other agreement, document, mortgage or instrument pursuant to which a Lien is granted securing any ABL Obligations or under which rights or remedies with respect to such Liens are governed, as the same may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

“ABL Security Agreement” shall mean the Pledge and Security Agreement, dated as of the date hereof, among the Borrower, the other Grantors from time to time party thereto and the ABL Collateral Agent, as the same may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

5

“Affiliate” shall mean as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, or contract.

“Agreement” shall mean this Agreement, as amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

“Bankruptcy Code” shall mean Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“Bankruptcy Court” has the meaning set forth in Section 6.1(a)(ii) hereto.

“Bankruptcy Law” shall mean, collectively, the Bankruptcy Code as now and hereafter in effect, or any successor statute, and any similar federal provincial, state or foreign law for the relief of debtors.

“Borrower” shall mean (a) with respect to each of the ABL Documents, the ABL Borrower, and (b) with respect to the Term Loan Documents, the Term Borrower.

“Business Day” shall mean a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

“Collateral” shall mean all assets and properties upon which a Lien is granted or purported to be granted to the ABL Collateral Agent or Term Collateral Agent under any of the ABL Security Documents or Term Security Documents.

“Collateral Agent” means, as the context requires, collectively, the ABL Collateral Agent and/or the Term Collateral Agent.

“Comparable ABL Security Document” shall mean, in relation to any ABL Priority Collateral subject to any Lien created under any Term Security Document, that ABL Security Document which creates a Lien on the same ABL Priority Collateral, granted by the same Grantor.

“Comparable Term Security Document” shall mean, in relation to any ABL Priority Collateral subject to any Lien created under any ABL Security Document, that Term Security Document which creates a Lien on the same ABL Priority Collateral, granted by the same Grantor.

“Creditors” shall mean, collectively, the ABL Creditors and the Term Creditors.

“Credit Suisse” has the meaning set forth in the preamble hereto.

“DD Finance” has the meaning set forth in the preamble hereto.

6

“Discharge of ABL Obligations” shall mean, except to the extent otherwise provided in Section 5.7 (and subject to Section 6.5), (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the ABL Documents, (b) payment in full of all other ABL Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest and premium, if any, are paid, (c) expiration, cancellation (without any prior demand for payment thereunder having been made or, if made, with such demand having been fully reimbursed in cash), cash collateralization or backstopping with a letter of credit reasonably acceptable to the Issuing Lender (in this case, as such term is defined in the ABL Credit Agreement) of all letters of credit issued under the ABL Credit Agreement and cash collateralization of any Grantor’s net obligation under ABL Hedge Agreements (to the extent required thereby with notification by the relevant ABL Hedge Providers to the ABL Collateral Agent) and (d) termination of all other commitments of the ABL Creditors under the ABL Loan Documents.

“Discharge of Term Obligations” shall mean, except to the extent otherwise provided in Section 5.7 (and subject to Section 6.5), (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the Term Loan Documents, (b) payment in full of all other Term Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest and premium, if any, are paid and (c) termination of all other commitments of the Term Creditors under the Term Loan Documents.

“Documents” shall mean, as the context requires, collectively, the ABL Documents and the Term Loan Documents.

“Douglas” has the meaning set forth in the preamble hereto.

“Equity Interests” of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interest in (however designated, whether voting or nonvoting) equity of such Person, including any common stock, preferred stock, any limited or general partnership interest and any limited liability company membership interest and any and all warrants, rights or options to purchase any of the foregoing.

“Exposure Amount” shall mean, with respect to any ABL Creditor Post-Petition Financing or Term Creditor Post-Petition Financing, the sum of (without duplication) (i) the aggregate principal amount of the commitments thereunder, (ii) any principal amount (for this purpose, including the maximum undrawn amounts of any then outstanding letters of credit and the aggregate amount of unpaid outstanding reimbursement obligations related thereto, and excluding all ABL Hedging Obligations and ABL Banking Services Obligations) outstanding pursuant to the ABL Credit Agreement as of the commencement of the relevant Insolvency or Liquidation Proceeding, and (iii) the aggregate principal amount of Term Obligations as of the commencement of such Insolvency or Liquidation Proceeding.

7

“Fisher” has the meaning set forth in the preamble hereto.

“Governmental Authority” shall mean any nation or government, any state, provincial or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Grantors” shall mean Holdings, the ABL Borrower, the Term Borrower and each of the Subsidiary Guarantors that have executed and delivered, or may from time to time hereafter execute and deliver, an ABL Security Document or a Term Security Document.

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

“Holdings” has the meaning set forth in the preamble hereto.

“Indebtedness” shall mean and includes all Obligations that constitute “Indebtedness” within the meaning of the ABL Credit Agreement or the Term Credit Agreement.

“Insolvency or Liquidation Proceeding” shall mean (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other Bankruptcy Law or any other Bankruptcy Law with respect to any Grantor, (b) any other voluntary or involuntary insolvency, reorganization, arrangement or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, arrangement or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its respective assets, (c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Grantor.

“Letters of Credit” shall mean “Letters of Credit” under, and as defined in, the ABL Credit Agreement.

“Lien” shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC or any similar recording or notice statute, and any lease having substantially the same effect as the foregoing).

“Loans” shall mean “Loans” under, and as defined in, the ABL Credit Agreement.

8

“Maximum ABL Principal Amount” shall mean, at any time, (i) \$90,000,000, 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, less (iii) the aggregate principal amount of Additional Term Loans (as defined in the Term Credit Agreement) made under the Term Credit Agreement, plus (iv) for the avoidance of doubt and without duplication, the aggregate principal amount of any interest that has been capitalized under the ABL Credit Agreement.

“Maximum Exposure Amount” shall mean, with respect to any ABL Creditor Post-Petition Financing or Term Creditor Post-Petition Financing, the sum of (i) the portion of the Maximum ABL Principal Amount outstanding as of the commencement of the relevant Insolvency or Liquidation Proceeding, (ii) the portion of the Maximum Term Principal Amount as of the commencement of such Insolvency or Liquidation Proceeding and (iii) \$40,000,000.

“Maximum Term Principal Amount” shall mean, at any time, (i) \$115,000,000, 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, less (iii) the aggregate principal amount of Additional Revolving Loan Commitments (as defined in the ABL Credit Agreement) made under the Term Credit Agreement, plus (iv) for the avoidance of doubt and without duplication, the aggregate principal amount of any interest that has been capitalized under the Term Credit Agreement.

“New ABL Agent” has the meaning set forth in Section 5.7(a) hereto.

“New Term Agent” has the meaning set forth in Section 5.7(b) hereto.

“Obligations” shall mean any and all obligations (including guaranty obligations) with respect to the payment and performance of (a) any principal of or interest or premium on any indebtedness, including, without limitation, any reimbursement obligation in respect of any letter of credit, or any other liability, including the payment of interest and other amounts that would accrue and become due but for the commencement of any Insolvency or Liquidation Proceeding of any Grantor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such Insolvency or Liquidation Proceeding, (b) any fees, indemnification obligations, expense reimbursement obligations or other liabilities payable under the documentation governing any indebtedness (including, without limitation, the retaking, holding, selling or otherwise disposing of or realizing on the Collateral), (c) any obligation to post cash collateral in respect of letters of credit or any other obligations, and (d) all performance obligations under the documentation governing any indebtedness.

“Person” shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Refinancing” shall mean,

(a) in respect of any Indebtedness and/or, if any, commitments to extend credit under the ABL Credit Agreement, any refinancing, extension, renewal, defeasance,

9

restructuring, replacement or refunding of loans and/or, if any, commitments under the ABL Credit Agreement, to the extent the aggregate principal amount of loans and commitments made in connection with such refinancing, extension, renewal, defeasance, restructuring, replacement or refunding does not exceed the Maximum ABL Principal Amount; provided that any such refinancing, extension, renewal, defeasance, restructuring, replacement or refunding (and the Indebtedness resulting therefrom) does not (i) contravene the provisions of this Agreement (and the holders of such refinancing Indebtedness, or an agent on their behalf, have agreed to be bound by the terms hereof), (ii) result in the increase in the “Applicable Margin” or similar component of the interest or the yield on the loans thereunder by more than 1.5% per annum (exclusive, for the avoidance of doubt, of any increases (A) resulting from application of the pricing grid set forth in the ABL Credit Agreement as in effect on the date hereof or (B) resulting from the accrual of interest at the default rate), (iii) provide for dates for payment of principal, interest, premium (if any) or fees which are earlier than such dates under the ABL Credit Agreement, or (iv) convert the ABL Credit Agreement to, or refinance the ABL Credit Agreement with, a term loan credit facility or a revolving credit facility the availability of which is not subject to a borrowing base comprised of accounts receivable and inventory.

(b) in respect of any Indebtedness and/or, if any, commitments to extend credit under the Term Credit Agreement, any refinancing, extension, renewal, defeasance, restructuring, replacement or refunding of loans and/or, if any, commitments under the Term Credit Agreement, to the extent the aggregate principal amount of loans and commitments made in connection with such refinancing, extension, renewal, defeasance, restructuring, replacement or refunding does not exceed the Maximum Term Principal Amount; provided that any such refinancing, extension, renewal, defeasance, restructuring, replacement or refunding (and the Indebtedness

resulting therefrom) does not (i) contravene the provisions of this Agreement (and the holders of such refinancing Indebtedness, or an agent on their behalf, have agreed to be bound by the terms hereof), (ii) result in an increase in the “Applicable Margin” or similar component of the interest yield of such refinancing Indebtedness which is more than 3.0% per annum above the “Applicable Margin” or similar component under the Term Credit Agreement as of the date hereof (excluding increases resulting from the accrual of interest at the default rate); and (iii) change (to earlier dates) any dates upon which payments of principal or interest are due thereon.

With respect to clause (a), the Term Administrative Agent shall be provided with written notice by the Borrower that the Obligations arising from the refinancing, extension, renewal, defeasance, restructuring, replacement or refunding referenced in clause (a) are intended to constitute ABL Obligations hereunder (it being understood that the failure of any such notice to be given shall not impair or affect the Term Administrative Agent’s or the Term Creditor’s obligations to the ABL Administrative Agent and the ABL Creditors, the ABL Administrative Agent’s rights hereunder, the enforceability of this Agreement or any liens created or granted hereby or under any ABL Loan Document). With respect to clause (b), the ABL Administrative Agent shall be provided with written notice that the Obligations arising from the refinancing, extension, renewal, defeasance, restructuring, replacement or refunding referenced in clause (b) are intended to constitute Term Obligations hereunder (it being understood that the failure of any such notice to be given shall not impair or affect the ABL Administrative Agent’s or any ABL Creditor’s obligations to the Term Administrative Agent and the Term Creditors, the Term

10

Administrative Agent’s rights hereunder, the enforceability of this Agreement or any liens created or granted hereby or under any Term Document).

“Required ABL Creditors” shall mean at all times prior to the occurrence of the Discharge of ABL Obligations, the ABL Required Lenders (or, to the extent required by the ABL Credit Agreement, each of the ABL Lenders).

“Required Term Creditors” shall mean at all times prior to the occurrence of the Discharge of Term Obligations, the Term Required Lenders (or, to the extent required by the Term Credit Agreement, each of the Term Lenders).

“Security Documents” shall mean, collectively, the ABL Security Documents and the Term Security Documents.

“Subsidiary Guarantors” shall mean each Subsidiary of Holdings which enters into a guaranty of any ABL Obligations or Term Obligations.

“Subsidiary” shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other Equity Interests having ordinary voting power (other than stock or such other Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Term Administrative Agent” has the meaning set forth in the preamble hereto.

“Term Borrower” has the meaning set forth in the preamble hereto.

“Term Collateral Agent” has the meaning provided in the first paragraph of this Agreement.

“Term Credit Agreement” has the meaning set forth in the recitals hereto.

“Term Creditor Post-Petition Financing” has the meaning set forth in Section 6.1(b)(i) hereto.

“Term Creditors” shall mean, at any relevant time, the holders of Term Obligations at such time, including without limitation the Term Lenders, the Term Collateral Agent, the Term Administrative Agent and any other agents under the Term Credit Agreement.

“Term Lenders” shall mean the “Lenders” under and as defined in the Term Credit Agreement.

11

“Term Loan Documents” shall mean the Term Credit Agreement and the other Credit Documents (as defined in the Term Credit Agreement) and each of the other agreements, documents and instruments executed or delivered at any time in connection therewith (including any intercreditor or joinder agreement among holders of Term Obligations), to the extent such are effective at the relevant time, as the same may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

“Term Obligations” shall mean all Obligations outstanding under the Term Credit Agreement and the other Term Loan Documents. “Term Obligations” shall in any event include: (a) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding (and the effect of provisions such as Section 502(b)(2) of the Bankruptcy Code), accrue) after commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Term Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding and (b) any and all fees and expenses (including attorneys’ and/or financial consultants’ fees and expenses) incurred by the Term Collateral Agent, the Term Administrative Agent and the Term Creditors after the commencement of an Insolvency or Liquidation Proceeding, whether or not the claim for fees and expenses is allowed under Section 506(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or Bankruptcy Law as a claim in such Insolvency or Liquidation Proceeding. The Term Obligations shall not include (x) principal in excess of the Maximum Term Principal Amount or (y) any amount in clauses (a) through (c) of the preceding sentence incurred in connection with the enforcement of the excess amounts referred to in preceding clause (x).

“Term Priority Collateral” shall mean any and all Collateral, other than the ABL Priority Collateral.

“Term Recovery” has the meaning set forth in Section 6.5(b) hereto.

“Term Required Lenders” shall mean the “Requisite Lenders” under, and as defined in, the Term Credit Agreement.

“Term Secured Parties” shall mean, at any time, the Term Collateral Agent, the Term Administrative Agent, each Term Creditor, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Term Document and each other holder of, or obligee in respect of, any Term Obligations outstanding at such time.

“Term Security Documents” shall mean the Collateral Documents (as defined in the Term Credit Agreement), and any other agreement, document, mortgage or instrument pursuant to which a Lien is granted securing any Term Obligations or under which rights or remedies with respect to such Liens are governed, as the same may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

“Term Security Agreement” shall mean the Pledge and Security Agreement, dated as of the date hereof, among the Borrower, the other Grantors from time

and/or replaced from time to time or otherwise modified from time to time in accordance with the terms hereof and thereof.

“Term Guaranty” shall mean the guaranty pursuant to Section VII of the Term Credit Agreement.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York.

SECTION 1.2 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Exhibits or Sections shall be construed to refer to Exhibits or Sections of this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (f) terms defined in the UCC but not otherwise defined herein shall have the same meanings herein as are assigned thereto in the UCC, (g) reference to any law means such law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect on the date hereof, including rules, regulations, enforcement procedures and any interpretations promulgated thereunder and (h) underscored references to Sections or clauses shall refer to those portions of this Agreement, and any underscored references to a clause shall, unless otherwise identified, refer to the appropriate clause within the same Section in which such reference occurs.

ARTICLE II

PRIORITY OF LIENS; ETC.

SECTION 2.1 Subordination of Liens; Etc. (a) ABL Priority Collateral. Notwithstanding the date, manner or order of grant, attachment or perfection of (x) any Liens securing the ABL Obligations granted on the ABL Priority Collateral or (y) any Liens securing the Term Obligations granted on the ABL Priority Collateral and notwithstanding any provision of the UCC, any other applicable law, the Term Loan Documents or any other circumstance whatsoever (including any invalidity or non-perfection of any Lien purporting to secure the ABL Obligations, and/or the Term Obligations), the Term Collateral Agent, on behalf of itself and the other Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) hereby agree that:

(i) any Lien on the ABL Priority Collateral securing any ABL Obligations now or hereafter held by or on behalf of the ABL Collateral Agent or any ABL Creditors or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the ABL Priority Collateral securing any of the Term Obligations;

(ii) all Liens on the ABL Priority Collateral securing any ABL Obligations shall be and remain senior in all respects and prior to all Liens on the ABL Priority Collateral securing any Term Obligations, whether or not such Liens securing any ABL Obligations are subordinated to any Lien securing any other obligation of the Borrower, any other Grantor or any other Person;

(iii) it is their intent that (x) the ABL Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the Term Obligations (and the security therefor) and (y) the Term Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the ABL Obligations (and the security therefor).

(b) Term Priority Collateral. Notwithstanding the date, manner or order of grant, attachment or perfection of (x) any Liens securing the Term Obligations granted on the Term Priority Collateral or (y) any Liens securing the ABL Obligations granted on the Term Priority Collateral and notwithstanding any provision of the UCC, any other applicable law, the ABL Loan Documents or any other circumstance whatsoever (including any invalidity or non-perfection of any Lien purporting to secure the Term Obligations and/or the ABL Obligations), the ABL Collateral Agent, on behalf of itself and the other ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents) hereby agree that:

(i) any Lien on the Term Priority Collateral securing any Term Obligations now or hereafter held by or on behalf of the Term Collateral Agent or any Term Creditors or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Term Priority Collateral securing any of the ABL Obligations;

(ii) all Liens on the Term Priority Collateral securing any Term Obligations shall be and remain senior in all respects and prior to all Liens on the Term Priority Collateral securing any ABL Obligations for all purposes, whether or not such Liens securing any Term Obligations are subordinated to any Lien securing any other obligation of the Borrower, any other Grantor or any other Person;

(iii) it is their intent that (x) the Term Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the ABL Obligations (and the security therefor) and (y) the ABL Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the Term Obligations (and the security therefor).

Notwithstanding anything to the contrary contained above or elsewhere in this Agreement, for all purposes of this Agreement (x) the ABL Obligations shall be deemed secured by Liens on all ABL Priority Collateral regardless of whether a Lien or security interest has in fact been granted (or purported to be granted) with respect thereto and (y) the Term Obligations shall be deemed secured by Liens on all Term Priority Collateral regardless of whether a Lien or security interest has in fact been granted (or purported to be granted) with respect thereto.

SECTION 2.2 Prohibition on Contesting Liens. The Term Collateral Agent, for itself and on behalf of each Term Creditor, and the ABL Collateral Agent, for itself and on behalf of each ABL Creditor, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including, without limitation, any Insolvency or Liquidation Proceeding), (i) the validity or enforceability of any Security Document or any Obligation thereunder, (ii) the validity, perfection, priority or enforceability of the Liens, mortgages, assignments and security interests granted (or purported to be granted) pursuant to the Security Documents with respect to the ABL Obligations or the Term Obligations, or (iii) the relative rights and duties of the holders of the ABL Obligations and the Term

Obligations granted and/or established in this Agreement or any other Security Document (to the extent not inconsistent with the terms of this Agreement) with respect to such Liens, mortgages, assignments, and security interests; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any Collateral Agent or any other Creditor to enforce this Agreement, including the priority of the Liens securing the respective Obligations as provided in Section 2.1.

SECTION 2.3 No New Liens. (a) ABL Obligation — ABL Priority Collateral. So long as the Discharge of ABL Obligations has not occurred, the parties hereto agree that the Grantors shall not, and shall not permit any of their Subsidiaries to (i) grant or permit any additional Liens, or take any action to perfect any additional Lien, on any ABL Priority Collateral to secure any Term Obligation unless the Grantors and each such Subsidiary has become a Grantor hereunder and/or has also granted a Lien on such ABL Priority Collateral to secure the ABL Obligations in accordance with the relevant priority set forth in this Agreement or (ii) grant or permit any additional Liens, or take any action to perfect any additional Liens, on any ABL Priority Collateral to secure any ABL Obligation unless the Grantors and each such Subsidiary has become a Grantor hereunder and/or has also granted a Lien on such ABL Priority Collateral to secure the Term Obligations in accordance with the relevant priority set forth in this Agreement. To the extent that the forgoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the ABL Collateral Agent and/or the other ABL Creditors and the Term Collateral Agent and/or the other Term Creditors (in each case by its acceptance of the benefits of the respective Security Documents), each of the ABL Collateral Agent and Term Collateral Agent agrees that any amounts received by or distributed to any of them pursuant to or as a result of any liens granted in contravention of this Section 2.3(a) shall be subject to Section 4.2(a).

(b) Term Obligations — Term Priority Collateral. So long as the Discharge of Term Obligations has not occurred, the parties hereto agree that the Grantors shall not, and shall not permit any of their Subsidiaries to (i) grant or permit any additional Liens, or take any action to perfect any additional Lien, on any Term Priority Collateral to secure any ABL Obligation unless the Grantors and each such Subsidiary has become a Grantor hereunder and/or has also

15

granted a Lien on such Term Priority Collateral to secure the Term Obligations in accordance with the relevant priority set forth in this Agreement or (ii) grant or permit any additional Liens, or take any action to perfect any additional Lien, on any Term Priority Collateral to secure any Term Obligation unless the Grantors and each such Subsidiary has become a Grantor hereunder and/or has also granted a Lien on such Term Priority Collateral to secure the ABL Obligations in accordance with the relevant priority set forth in this Agreement. To the extent that the forgoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Term Collateral Agent and/or the other Term Creditors and the ABL Collateral Agent and/or the other ABL Creditors (in each case by its acceptance of the benefits of the respective Security Documents), each of the ABL Collateral Agent and Term Collateral Agent agrees that any amounts received by or distributed to any of them pursuant to or as a result of any liens granted in contravention of this Section 2.3(b) shall be subject to Section 4.2(c).

SECTION 2.4 Similar Liens and Agreements. The parties hereto agree that it is their intention that the Collateral under the ABL Loan Documents and the Term Loan be identical. In furtherance of the foregoing and of Section 8.9, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by the ABL Collateral Agent or the Term Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Priority Collateral and the Term Priority Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Loan Documents and Term Loan Documents; and

(b) that the ABL Security Agreement and Term Security Agreement shall be substantially in the same forms (except for differences relating to the subordination of the Liens between the ABL Obligations and Term Obligations).

ARTICLE III

ENFORCEMENT

SECTION 3.1 Exercise of Remedies. (a) ABL Priority Collateral — No Contest by Term Creditors. The provisions of this clause (a) are subject to clause (k) below. So long as the Discharge of ABL Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower or any other Grantor: (i) the Term Collateral Agent and the other Term Creditors will not exercise or seek to exercise any rights or remedies (including, without limitation, setoff) with respect to any ABL Priority Collateral (including, without limitation, the exercise of any right under any lockbox agreement, control account agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which any of the Term Collateral Agent or any Term Creditor is a party) or institute or commence, or join with any Person in commencing, any action or proceeding with respect to such rights or remedies (including, without limitation, any action of foreclosure, enforcement, collection or execution and any Insolvency or Liquidation Proceeding), and will not contest, protest or object to any foreclosure proceeding or action brought by the ABL Collateral Agent or

16

any ABL Creditor or any other exercise by the ABL Collateral Agent or any ABL Creditor, of any rights and remedies relating to the ABL Priority Collateral under the ABL Loan Documents or otherwise, or object to the forbearance by the ABL Collateral Agent or the ABL Creditors from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the ABL Priority Collateral; and (ii) the ABL Collateral Agent shall have the exclusive right, and the Required ABL Creditors shall have the exclusive right to instruct the ABL Collateral Agent, to enforce rights, exercise remedies (including, without limitation, set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the ABL Priority Collateral without any consultation with or the consent of any of the Term Collateral Agent or any Term Creditor, all as though the Term Obligations did not exist; provided, that (A) in any Insolvency or Liquidation Proceeding commenced by or against the Borrower or any Grantor, the Term Collateral Agent and, if applicable, each other Term Creditor may file a claim or statement of interest with respect to the Term Obligations, (B) the Term Collateral Agent may take any action (not adverse to the prior Liens on the ABL Priority Collateral securing the ABL Obligations, or the rights of the ABL Collateral Agent or the ABL Creditors to exercise remedies in respect thereof) in order to preserve or protect their respective Liens on the ABL Priority Collateral in accordance with the terms of this Agreement and (C) the Term Creditors shall be entitled to file any necessary responsive or defensive pleading in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Term Creditors. In exercising rights and remedies with respect to the ABL Priority Collateral, the ABL Collateral Agent and the ABL Creditors may enforce the provisions of the ABL Loan Documents and exercise rights and remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of ABL Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) Term Priority Collateral — No Contest by ABL Creditors. The provisions of this clause (b) are subject to clause (n) below. So long as the Discharge of Term Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower or any other Grantor: (i) the ABL Collateral Agent and the other ABL Creditors will not exercise or seek to exercise any rights or remedies (including, without limitation, setoff) with respect to any Term Priority Collateral (including, without limitation, the exercise of any right under any lockbox agreement, control account agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which any of the ABL Collateral Agent or any ABL Creditor is a party) or institute or commence, or join with any Person in commencing, any action or proceeding with respect to such rights or remedies (including, without limitation, any action of foreclosure, enforcement, collection or execution and any Insolvency or Liquidation Proceeding), and will not contest, protest or object to any foreclosure proceeding or action brought by the Term Collateral Agent or any Term Creditor or any other exercise by the Term Collateral Agent or any Term Creditor, of any rights and remedies relating to the Term Priority Collateral under the Term Loan Documents or otherwise, or object to the forbearance by the Term Collateral Agent or the Term Creditors from bringing or pursuing any foreclosure proceeding or

Term Priority Collateral; and (ii) the Term Collateral Agent shall have the exclusive right, and the Required Term Creditors shall have the exclusive right to instruct the Term Collateral Agent, to enforce rights, exercise remedies (including, without limitation, set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Term Priority Collateral without any consultation with or the consent of any of the ABL Collateral Agent or any ABL Creditor, all as though the ABL Obligations did not exist; provided, that in any Insolvency or Liquidation Proceeding commenced by or against the Borrower or any other Grantor, (A) the ABL Collateral Agent and, if applicable, each other ABL Creditor may file a claim or statement of interest with respect to the ABL Obligations, (B) the ABL Collateral Agent may take any action (not adverse to the prior Liens on the Term Priority Collateral securing the Term Obligations, or the rights of the Term Collateral Agent or the Term Creditors to exercise remedies in respect thereof) in order to preserve or protect their respective Liens on the Term Priority Collateral in accordance with the terms of this Agreement and (C) the ABL Creditors shall be entitled to file any necessary responsive or defensive pleading in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the ABL Creditors, including any claim secured by the Term Priority Collateral, if any, in each case in accordance with the terms of this Agreement. In exercising rights and remedies with respect to the Term Priority Collateral, the Term Collateral Agent and the Term Creditors may enforce the provisions of the Term Loan Documents and exercise rights and remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Term Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(c) [RESERVED]

(d) [RESERVED]

(e) Receipt of ABL Priority Collateral by Term Creditors. The Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) agree that it will not take or receive any ABL Priority Collateral or any proceeds of ABL Priority Collateral in connection with the exercise of any right or remedy (including, without limitation; setoff) with respect to any ABL Priority Collateral, unless and until the Discharge of ABL Obligations has occurred. Without limiting the generality of the foregoing, unless and until the Discharge of ABL Obligations has occurred, the sole right of the Term Collateral Agent and the Term Creditors with respect to the ABL Priority Collateral is to hold a Lien on the ABL Priority Collateral pursuant to the Term Security Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of the ABL Obligations has occurred in accordance with the terms of Article IV hereof, the Term Loan Documents and applicable law.

(f) Receipt of Term Priority Collateral by ABL Creditors. The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents) agree that it will not take or receive any

Term Priority Collateral or any proceeds of Term Priority Collateral in connection with the exercise of any right or remedy (including, without limitation, setoff) with respect to any Term Priority Collateral, unless and until the Discharge of Term Obligations has occurred. Without limiting the generality of the foregoing, unless and until the Discharge of Term Obligations has occurred, the sole right of the ABL Collateral Agent and the ABL Creditors with respect to the Term Priority Collateral is to hold a Lien on the Term Priority Collateral pursuant to the ABL Security Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of the Term Obligations has occurred in accordance with the terms of Article IV hereof, the ABL Loan Documents and applicable law.

(g) ABL Priority Collateral — Term Creditor Waiver. (i) The Term Collateral Agent, for itself and on behalf of the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), with respect to the ABL Priority Collateral, (x) agrees that the Term Collateral Agent and the other Term Creditors will not take any action that would hinder, delay, limit or prohibit any exercise of remedies under the ABL Loan Documents, including any collection, sale, lease, exchange, transfer or other disposition of the ABL Priority Collateral, whether by foreclosure or otherwise, or that would limit, invalidate, avoid or set aside any Lien or ABL Security Document or subordinate the priority of the ABL Obligations to the Term Obligations or grant the Liens securing the Term Obligations equal ranking to the Liens securing the ABL Obligations and (y) hereby waives any and all rights it or the Term Creditors may have as a junior lien creditor or otherwise (whether arising under the UCC or under any other law) to object to the manner in which the ABL Collateral Agent or the ABL Creditors seek to enforce or collect the ABL Obligations or the Liens granted in any of the ABL Priority Collateral, regardless of whether any action or failure to act by or on behalf of the ABL Collateral Agent or ABL Creditors is adverse to the interests of the Term Creditors.

(ii) The Term Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Term Security Documents or any other Term Loan Document shall be deemed to restrict in any way the rights and remedies of the ABL Collateral Agent or the ABL Creditors with respect to the ABL Priority Collateral as set forth in this Agreement.

(h) Term Priority Collateral — ABL Creditor Waiver. (i) The ABL Collateral Agent, for itself and on behalf of the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), with respect to the Term Priority Collateral, (x) agrees that the ABL Collateral Agent and the other ABL Creditors will not take any action that would hinder, delay, limit or prohibit any exercise of remedies under the Term Loan Documents, including any collection, sale, lease, exchange, transfer or other disposition of the Term Priority Collateral, whether by foreclosure or otherwise, or that would limit, invalidate, avoid or set aside any Lien or Term Security Document or subordinate the priority of the Term Obligations to the ABL Obligations or grant the Liens securing the ABL Obligations equal ranking to the Liens securing the Term Obligations and (y) hereby waives any and all rights it or the ABL Creditors may have as a junior lien creditor or otherwise (whether arising under the UCC or under any other law) to object to the manner in which the Term Collateral Agent or the Term Creditors seek to enforce or collect the Term Obligations or the Liens granted in any of the Term Priority Collateral, regardless of whether any action or failure to act by or on behalf of the Term Collateral Agent or Term Creditors is adverse to the interests of the ABL Creditors.

(ii) The ABL Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the ABL Security Documents or any other ABL Loan Document shall be deemed to restrict in any way the rights and remedies of the Term Collateral Agent or the Term Creditors with respect to the Term Priority Collateral as set forth in this Agreement.

(i) [RESERVED]

(j) [RESERVED]

(k) ABL Priority Collateral — Term Creditor Rights. Notwithstanding anything to the contrary in Section 3.1(a) through (h), with respect to the ABL

Priority Collateral, at any time while a payment default exists with respect to the Term Obligations following the final maturity of the Term Obligations, or the acceleration by the relevant Term Creditors of the maturity of all then outstanding Term Obligations, and in either case so long as 120 days have elapsed after notice thereof (and requesting that enforcement action be taken with respect to the ABL Priority Collateral) has been received by the ABL Collateral Agent and so long as the respective payment default shall not have been cured or waived (or the respective acceleration rescinded), the Term Collateral Agent, for itself and on behalf of the Term Creditors, and the other Term Creditors may, but only if the ABL Collateral Agent or the ABL Creditors are not pursuing enforcement proceedings with respect to the ABL Priority Collateral in a commercially reasonable manner (with any determination of which ABL Priority Collateral to proceed against, and in what order, to be made by the ABL Collateral Agent or such ABL Creditors in their reasonable judgment), enforce the Liens on ABL Priority Collateral granted pursuant to the Term Security Documents, provided that (x) any ABL Priority Collateral or any proceeds of ABL Priority Collateral received by the Term Collateral Agent or such other Term Creditor, as the case may be, in connection with the enforcement of such Lien (net of reasonable costs actually incurred in connection with such enforcement) shall be applied in accordance with the following Article IV hereof and (y) the ABL Collateral Agent or any other ABL Creditors may at any time take over such enforcement proceedings, provided that the ABL Collateral Agent or such ABL Creditors, as the case may be, pursues enforcement proceedings in respect of the ABL Priority Collateral in a commercially reasonable manner, with any determination of which ABL Priority Collateral to proceed against, and in what order, to be made by the ABL Collateral Agent or such ABL Creditors in their reasonable judgment, and provided, further that the Term Collateral Agent or Term Creditors, as the case may be, shall only be able to recoup (from amounts realized by the ABL Collateral Agent or any ABL Creditor(s) in any enforcement proceeding with respect to the ABL Priority Collateral (whether initiated by the ABL Collateral Agent or ABL Creditor(s) or taken over by them as contemplated above) any expenses incurred by them in accordance with the priorities set forth in following Article IV.

(l) [RESERVED]

(m) [RESERVED]

(n) Term Priority Collateral — ABL Creditor Rights Notwithstanding anything to the contrary in Section 3.1(a) through (h) with respect to the Term Priority Collateral, at any time while a payment default exists with respect to the ABL Obligations following the

20

final maturity of the ABL Obligations, or the acceleration by the relevant ABL Creditors of the maturity of all then outstanding ABL Obligations, and in either case so long as 120 days have elapsed after notice thereof (and requesting that enforcement action be taken with respect to the Term Priority Collateral) has been received by the Term Collateral Agent and so long as the respective payment default shall not have been cured or waived (or the respective acceleration rescinded), the ABL Collateral Agent, for itself and on behalf of the ABL Creditors, and the other ABL Creditors may, but only if the Term Collateral Agent or the Term Creditors are not pursuing enforcement proceedings with respect to the Term Priority Collateral in a commercially reasonable manner (with any determination of which Term Priority Collateral to proceed against, and in what order, to be made by the Term Collateral Agent or such Term Creditors in their reasonable judgment), enforce the Liens on Term Priority Collateral granted pursuant to the ABL Security Documents, provided that (x) any Term Priority Collateral or any proceeds of Term Priority Collateral received by the ABL Collateral Agent or such other ABL Creditor, as the case may be, in connection with the enforcement of such Lien (net of reasonable costs actually incurred in connection with such enforcement) shall be applied in accordance with the following Article IV hereof and (y) the Term Collateral Agent or any other Term Creditors or may at any time take over such enforcement proceedings, provided that the Term Collateral Agent or such Term Creditors, as the case may be, pursues enforcement proceedings in respect of the Term Priority Collateral in a commercially reasonable manner, with any determination of which Term Priority Collateral to proceed against, and in what order, to be made by the Term Collateral Agent or such Term Creditors in their reasonable judgment, and provided, further that the ABL Collateral Agent or ABL Creditors, as the case may be, shall only be able to recoup (from amounts realized by the Term Collateral Agent or any Term Creditor(s)) in any enforcement proceeding with respect to the collateral (whether initiated by the Term Collateral Agent or Term Creditor(s), or taken over by them as contemplated above) any expenses incurred by them in accordance with the priorities set forth in following Article IV.

ARTICLE IV

PAYMENTS

SECTION 4.1 Application of Proceeds. (a) ABL Priority Collateral. So long as the Discharge of ABL Obligations has not occurred, any proceeds of any ABL Priority Collateral pursuant to the enforcement of any Security Document or the exercise of any remedial provision thereunder, together with all other proceeds received by any Creditor as a result of any such enforcement or the exercise of any such remedial provision or as a result of any distribution of or in respect of any ABL Priority Collateral (whether or not expressly characterized as such) upon or in any Insolvency or Liquidation Proceeding with respect to any Grantor, or the application of any Collateral (or proceeds thereof) to the payment thereof or any distribution of ABL Priority Collateral (or proceeds thereof) upon the liquidation or dissolution of any Grantor, shall be applied by the ABL Collateral Agent (or paid over to the ABL Collateral Agent and applied by it) to the ABL Obligations in such order as specified in the relevant ABL Loan Document. Upon the Discharge of the ABL Obligations and so long as Discharge of Term Obligations has not occurred, the ABL Collateral Agent shall deliver to the Term Collateral Agent any proceeds of ABL Priority Collateral held by it in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct.

21

(b) Term Priority Collateral. So long as the Discharge of Term Obligations has not occurred, any proceeds of any Term Priority Collateral pursuant to the enforcement of any Security Document or the exercise of any remedial provision thereunder, together with all other proceeds received by any Creditor as a result of any such enforcement or the exercise of any such remedial provision or as a result of any distribution of or in respect of any Term Priority Collateral (whether or not expressly characterized as such) upon or in any Insolvency or Liquidation Proceeding with respect to any Grantor, or the application of any Term Priority Collateral (or proceeds thereof) to the payment thereof or any distribution of Term Priority Collateral (or proceeds thereof) upon the liquidation or dissolution of any Grantor, shall be applied by the Term Collateral Agent (or paid over to the Term Collateral Agent and applied by it) to the Term Obligations in such order as specified in the relevant Term Loan Document. Upon the Discharge of the Term Obligations and so long as the Discharge of ABL Obligations has not occurred, the Term Collateral Agent shall deliver to the ABL Collateral Agent any proceeds of Term Priority Collateral held by it in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct.

SECTION 4.2 Payments Over. (a) ABL Priority Collateral. Until such time as the Discharge of ABL Obligations has occurred, any ABL Priority Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in the final sentence of Section 2.3(a)) (or any distribution in respect of the ABL Priority Collateral, whether or not expressly characterized as such) received by any of the Term Collateral Agent or any Term Creditors in connection with the exercise of any right or remedy (including set-off) relating to the ABL Priority Collateral or otherwise shall be segregated and held in trust and forthwith paid over to the ABL Collateral Agent for the benefit of the ABL Creditors in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The ABL Collateral Agent is hereby authorized to make any such endorsements as agent for any of the Term Collateral Agent or any such Term Creditors. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(b) [RESERVED]

(c) Term Priority Collateral. Until such time as the Discharge of Term Obligations has occurred, any Term Priority Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in the final sentence of Section 2.3(b)) (or any distribution in respect of the Term Priority Collateral, whether or not expressly characterized as such) received by the ABL Collateral Agent or any ABL Creditors in connection with the exercise of any right or remedy (including set-off) relating to the Term Priority Collateral or otherwise shall be segregated and held in trust and forthwith paid over to the Term Collateral Agent for the benefit of the Term

Creditors in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Term Collateral Agent is hereby authorized to make any such endorsements as agent for the ABL Collateral Agent or any such ABL Creditors. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(d) [RESERVED]

22

ARTICLE V
OTHER AGREEMENTS

SECTION 5.1 Releases.

(a) ABL Priority Collateral. If, in connection with:

(i) the exercise of the ABL Collateral Agent's remedies in respect of the ABL Priority Collateral provided for in Section 3.1, including any sale, lease, exchange, transfer or other disposition of any such ABL Priority Collateral; or

(ii) any sale, lease, exchange, transfer or other disposition of any ABL Priority Collateral permitted under the terms of the ABL Loan Documents and Term Loan Documents (in each case, as in effect on the date hereof and whether or not an "event of default" under any of such documents has occurred and is continuing),

there occurs the release by the ABL Collateral Agent, acting on its own or at the direction of the Required ABL Creditors, of any of its Liens on any part of the ABL Priority Collateral, or of any Grantor from its obligations under its guaranty of the ABL Obligations, then the Liens, if any, of the Term Collateral Agent, for itself and for the benefit of the Term Creditors and of any other Term Creditor, on such ABL Priority Collateral, and the obligations of such Grantor under its guaranties (if any) of the Term Obligations, shall be automatically, unconditionally and simultaneously released, and the Term Collateral Agent, for itself and on behalf of any such Term Creditors, promptly shall execute and deliver to the ABL Collateral Agent or such Grantor such termination statements, releases and other documents as the ABL Collateral Agent or such Grantor may request to effectively confirm such release; provided, however that if an "event of default" then exists under the Term Credit Agreement and the Discharge of ABL Obligations occurs concurrently with the effectiveness of any such release, the Term Collateral Agent shall be entitled to receive the residual cash or cash equivalents (if any) remaining after giving effect to such release and the Discharge of the ABL Obligations for application in accordance with the provisions of Section 4 hereof.

(b) [RESERVED]

(c) [RESERVED]

(d) Term Priority Collateral. If, in connection with:

(i) the exercise of the Term Collateral Agent's remedies in respect of the Term Priority Collateral provided for in Section 3.1, including any sale, lease, exchange, transfer or other disposition of any such Term Priority Collateral; or

(ii) any sale, lease, exchange, transfer or other disposition of any Term Priority Collateral permitted under the terms of the Term Loan Documents and ABL Loan Documents (in each case, as in effect on the Closing Date and whether or not an "event of default" under any of such documents has occurred and is continuing);

23

there occurs the release by the Term Collateral Agent, acting on its own or at the direction of the Required Term Creditors, of any of its Liens on any part of the Term Priority Collateral, or of any Grantor from its obligations under its guaranty of the Term Obligations, then the Liens, if any, of the ABL Collateral Agent, for itself and for the benefit of the ABL Creditors, and of any other ABL Creditor, on such Collateral, and the obligations of such Grantor under its guaranties (if any) of the ABL Obligations, shall be automatically, unconditionally and simultaneously released, and the ABL Collateral Agent, for itself and on behalf of any such ABL Creditors, promptly shall execute and deliver to the Term Collateral Agent or such Grantor such termination statements, releases and other documents as the Term Collateral Agent or such Grantor may request to effectively confirm such release; provided, however that if an "event of default" then exists under the ABL Credit Agreement and the Discharge of Term Obligations occurs concurrently with the effectiveness of any such release, the ABL Collateral Agent shall be entitled to receive the residual cash or cash equivalents (if any) remaining after giving effect to such release and the Discharge of the Term Obligations for application in accordance with the provisions of Section 4 hereof.

(e) [RESERVED]

(f) [RESERVED]

SECTION 5.2 Insurance - ABL Priority Collateral. (a) Unless and until the Discharge of ABL Obligations has occurred, the ABL Collateral Agent (acting at the direction of the Required ABL Creditors) shall have the sole and exclusive right, as between the ABL Collateral Agent and the Term Collateral Agent, to adjust settlement under any insurance policy covering the ABL Priority Collateral in the event of any loss thereunder to the extent relating to the ABL Priority Collateral and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) to the extent relating to the ABL Priority Collateral. Unless and until the Discharge of ABL Obligations has occurred, and subject to the rights of the Grantors under the ABL Security Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) in respect to the ABL Priority Collateral shall be paid to the ABL Collateral Agent for the benefit of the ABL Creditors pursuant to the terms of the ABL Loan Documents (including, without limitation, for purposes of cash collateralization of ABL Obligations consisting of commitments, letters of credit and ABL Hedge Agreements (to the extent required thereby with notification by the relevant ABL Hedge Provider to the ABL Collateral Agent)) and, after the Discharge of ABL Obligations has occurred, to the Term Collateral Agent for the benefit of the Term Creditors to the extent required under the Term Security Documents, and then, to the extent no Term Obligations are outstanding, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If either the Term Collateral Agent or any Term Creditors shall, at any time prior to the Discharge of ABL Obligations, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, it shall pay such proceeds over to the ABL Collateral Agent.

(b) Term Priority Collateral. Unless and until the Discharge of Term Obligations has occurred, the Term Collateral Agent (acting at the direction of the Required Term Creditors) shall have the sole and exclusive right, as between the Term Collateral Agent and the ABL Collateral Agent, to adjust settlement under any insurance policy covering the

24

Term Priority Collateral in the event of any loss thereunder to the extent relating to the ABL Priority Collateral and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) to the extent relating to the Term Priority Collateral. Unless and until the Discharge of Term Obligations has occurred, and subject to the rights of the Grantors under the Term Security Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) in respect to the Term Priority Collateral shall be paid to the Term Collateral Agent for the benefit of the Term Creditors pursuant to the terms of the Term Loan Documents (including, without limitation, for purposes of cash collateralization of Term Obligations consisting of commitments and letters of credit) and, after the Discharge of Term Obligations has occurred, to the ABL Collateral Agent for the benefit of the ABL Creditors to the extent required under the ABL Security Documents and then, to the extent no ABL Obligations are outstanding, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If either the ABL Collateral Agent or any ABL Creditors shall, at any time prior to the Discharge of Term Obligations, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, it shall pay such proceeds over to the Term Collateral Agent.

SECTION 5.3 Amendments to Credit Documents

(a) Amendments to ABL Loan Documents. Without the prior written consent of the Required Term Lenders, no ABL Loan Document may be amended, supplemented or otherwise modified to the extent such amendment, supplement or modification would (i) increase the then outstanding aggregate principal amount of the loans, letters of credit and reimbursement obligations under the ABL Credit Agreement plus, if any, any undrawn portion of any commitment under the ABL Credit Agreement in excess of the Maximum ABL Principal Amount, (ii) contravene the provisions of this Agreement, (iii) increase the "Applicable Margin" or similar component of the interest or the yield on the loans thereunder by more than 1.5% per annum (exclusive, for the avoidance of doubt, of any (A) increases resulting from application of the pricing grid set forth in the ABL Credit Agreement as of the date hereof or (B) increases of up to 2.0% resulting from the accrual of interest at the default rate), (iv) provide for scheduled dates for payment of principal, interest, premium (if any) or fees which are earlier than such dates under the ABL Credit Agreement, or (v) convert the ABL Credit Agreement to, or refinance the ABL Credit Agreement with, a term loan credit facility or a revolving credit facility the availability of which is not subject to a borrowing base comprised of accounts receivable and inventory.

(b) Amendments to Term Loan Documents. Without the prior written consent of the Required ABL Lenders, no Term Loan Document may be amended, supplemented or otherwise modified to the extent such amendment, supplement or modification would (i) contravene the provisions of this Agreement, (ii) increase the then outstanding aggregate principal amount of the loans under the Term Credit Agreement in excess of the Maximum Term Principal Amount, (iii) increase the "Applicable Margin" or similar component of the interest yield of the loans thereunder by more than 3.0% per annum from the "Applicable Margin" or similar component under the Term Credit Agreement as in effect as of the date hereof (exclusive, for the avoidance of doubt, of (A) increases resulting from application of the pricing grid set forth in the Term Credit Agreement as of the date hereof or (B) increases of up to 2.0% resulting

25

from the accrual of interest at the default rate) or (iv) provide for scheduled dates for payment of principal, interest, premiums (if any) or fees which are earlier than such dates under the Term Credit Agreement.

SECTION 5.4 Amendments to Security Documents (a) Amendments to Security Documents

(i) Without the prior written consent of the ABL Collateral Agent (acting at the direction of the Required ABL Creditors), no Term Security Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Term Security Document, would contravene the provisions of this Agreement or any ABL Loan Document.

(ii) Without the prior written consent of the Term Collateral Agent (acting at the direction of the Required Term Creditors), no ABL Security Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new ABL Security Document, would contravene the provisions of this Agreement.

(iii) [RESERVED]

(iv) Each Grantor and each ABL Creditor agrees that each ABL Security Document shall include the following language (or language of similar impact):

"Notwithstanding anything herein to the contrary, the lien and security interest granted to the ABL Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the ABL Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of May 21, 2007 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Intercreditor Agreement"), by and among Douglas Dynamics Company, L.L.C., Douglas Dynamics Holdings, Inc., Douglas Dynamics Finance Company and Fischer, LLC, the grantors from time to time party thereto, JPMorgan Chase Bank, N.A., as ABL Collateral Agent, and Credit Suisse, Cayman Island Branch, as Term Collateral Agent, and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control."

In addition, the Borrower agrees that each ABL Mortgage covering any Term Priority Collateral shall contain such other language as the Term Collateral Agent may reasonably request to reflect the subordination of such ABL Mortgage to the Term Security Document covering such Collateral.

(v) Each Grantor and each Term Creditor agrees that each Term Security Document shall include the following language (or language of similar impact):

26

"Notwithstanding anything herein to the contrary, the lien and security interest granted to the Term Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Term Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of May 21, 2007 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Intercreditor Agreement"), by and among Douglas Dynamics Company, L.L.C., Douglas Dynamics Holdings, Inc., Douglas Dynamics Finance Company and Fischer, LLC, the grantors from time to time party thereto, JPMorgan Chase Bank, N.A., as ABL Collateral Agent, and Credit Suisse, Cayman Island Branch, as Term Collateral Agent, and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control."

(b) Amendment to ABL Priority Collateral Security Documents. With respect to the ABL Priority Collateral, in the event that, at any time prior to the Discharge of ABL Obligations, the ABL Collateral Agent or the ABL Creditors and the relevant Grantor(s) enter into any amendment, waiver or consent in respect of any of the ABL Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any ABL Security Document or changing in any manner the rights of the ABL Collateral Agent, the ABL Creditors, the Borrower or any other Grantor thereunder, then such amendment, waiver or consent

shall apply automatically to any comparable provision of the Comparable Term Security Document without the consent of the Term Collateral Agent or the Term Creditors and without any action by the Term Collateral Agent, the Borrower or any other Grantor, provided, that (A) no such amendment, waiver or consent shall have the effect of (i) removing assets subject to the Lien of the Term Security Documents, except to the extent that a release of such Lien is permitted by Section 5.1 of this Agreement, (ii) imposing additional duties on the Term Collateral Agent without its consent, or (iii) permitting other liens on the ABL Priority Collateral not permitted under the terms of the Term Loan Documents or Article VI hereof and (B) notice of such amendment, waiver or consent shall have been given to the Term Collateral Agent (although the failure to give any such notice shall in no way affect the effectiveness of any such amendment, waiver or consent or impair or affect the Term Collateral Agent's or any Term Creditor's obligations to the ABL Collateral Agent and the ABL Lien Creditors).

(c) Amendment to Term Priority Collateral Security Documents With respect to the Term Priority Collateral, in the event that, at any time prior to the Discharge of Term Obligations, the Term Collateral Agent or the Term Creditors and the relevant Grantor(s) enter into any amendment, waiver or consent in respect of any of the Term Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any Term Security Document or changing in any manner the rights of the Term Collateral Agent, the Term Creditors, the Borrower or any other Grantor thereunder, then such amendment, waiver or consent shall apply automatically to any comparable provision of the Comparable ABL Security Document without the consent of the ABL Collateral Agent or the ABL Creditors and without any action by the ABL Collateral Agent, the Borrower or any other Grantor, provided, that (A) no such amendment, waiver or consent shall have the effect of (i) removing assets subject to the ABL Security Documents, except to the extent that a release of

27

such Lien is permitted by Section 5.1 of this Agreement, (ii) imposing additional duties on the ABL Collateral Agent without its consent, or (iii) permitting other liens on the Term Priority Collateral not permitted under the terms of the ABL Loan Documents, or Article VI hereof and (B) notice of such amendment, waiver or consent shall have been given to the ABL Collateral Agent (although the failure to give any such notice shall in no way affect the effectiveness of any such amendment, waiver or consent or impair or affect the ABL Collateral Agent's or any ABL Creditor's obligations to the Term Collateral Agent and the Term Creditors).

SECTION 5.5 Rights As Unsecured Creditors. Except as otherwise set forth in this Agreement, the ABL Collateral Agent, the ABL Creditors, the Term Collateral Agent and the Term Creditors may exercise rights and remedies as unsecured creditors against Holdings, Borrower or any Grantor that has guaranteed (x) the ABL Obligations in accordance with the terms of the ABL Loan Documents and applicable law and/or (y) the Term Obligations in accordance with the terms of the Term Loan Documents and applicable law. Except as otherwise set forth in this Agreement nothing in this Agreement shall prohibit the receipt by (x) the ABL Collateral Agent or any ABL Creditors of the required payments of interest and principal on the ABL Obligations or (y) the Term Collateral Agent or any Term Creditors of the required payments of interest and principal on the Term Obligations so long as such receipt is not the direct or indirect result of the exercise by the ABL Collateral Agent or any ABL Lien Creditor or the Term Collateral Agent or any Term Creditor of rights or remedies as a secured creditor (including set-off) or enforcement of any Lien held by any of them. In the event the Term Collateral Agent or any Term Creditor becomes a judgment lien creditor in respect of ABL Priority Collateral as a result of its enforcement of its rights as an unsecured creditor, such judgment lien shall be subordinated to the Liens securing ABL Obligations on the same basis as the other Liens securing the Term Obligations are so subordinated to the ABL Obligations under this Agreement. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the ABL Collateral Agent or the ABL Creditors may have with respect to the ABL Priority Collateral. In the event the ABL Collateral Agent or any ABL Creditor becomes a judgment lien creditor in respect of Term Priority Collateral as a result of its enforcement of its rights as an unsecured creditor, such judgment lien shall be subordinated to the Liens securing Term Obligations on the same basis as the other Liens securing the ABL Obligations, as the case may be, are so subordinated to the Term Obligations under this Agreement. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the Term Collateral Agent or the Term Creditors may have with respect to the Term Priority Collateral.

SECTION 5.6 Bailee for Perfection. (a) ABL Priority Collateral—Perfection of Security Interest. The ABL Collateral Agent agrees to acquire and acknowledges it holds any ABL Priority Collateral actually in its possession or control (or in the possession or control of its agents or bailees) on behalf of itself and the Term Collateral Agent and any assignee solely for the purpose of perfecting the security interest granted under the ABL Loan Documents and the Term Loan Documents, subject to the terms and conditions of this Section 5.6.

(b) ABL Priority Collateral — Exclusive Treatment. Until the Discharge of ABL Obligations has occurred, the ABL Collateral Agent shall be entitled to deal with the ABL Priority Collateral in accordance with the terms of the ABL Loan Documents as if the Liens of the Term Collateral Agent under the Term Security Documents did not exist. The rights of the Term Collateral Agent shall at all times be subject to the terms of this Agreement and, with

28

respect to the ABL Priority Collateral, to the ABL Collateral Agent's rights under the ABL Loan Documents.

(c) ABL Priority Collateral — Obligations of Collateral Agents. (i) The ABL Collateral Agent shall have no obligation whatsoever to the ABL Creditors, the Term Collateral Agent or any Term Creditor to assure that the ABL Priority Collateral is genuine or owned by any of the Grantors or to preserve any rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the ABL Collateral Agent under this Section 5.6 shall be limited solely to holding any ABL Priority Collateral actually in its possession or control as bailee in accordance with this Section 5.6.

(ii) After the Discharge of ABL Obligations has occurred, the Term Collateral Agent shall have no obligations whatsoever to the Term Creditors to assure that the ABL Priority Collateral is genuine or owned by any of the Grantors or to preserve any rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the Term Collateral Agent under this Section 5.6 shall be limited solely to holding any ABL Priority Collateral actually in its possession or control as bailee in accordance with this Section 5.6.

(d) ABL Priority Collateral — Delivery of Remaining ABL Priority Collateral. Upon the Discharge of ABL Obligations, the ABL Collateral Agent shall deliver the remaining ABL Priority Collateral (if any) (or proceeds thereof) in its possession, together with any necessary endorsements, (i) to the Term Collateral Agent, unless the Discharge of Term Obligations has occurred and (ii) if preceding clause (i) does not apply, to the relevant Grantor (in each case, so as to allow such Person to obtain control of such ABL Priority Collateral). The ABL Collateral Agent further agrees to take all other action reasonably requested by such Person in connection with such Person's obtaining a first-priority interest in the ABL Priority Collateral or as a court of competent jurisdiction may otherwise direct.

(e) Term Priority Collateral — Perfection of Security Interest. The Term Collateral Agent agrees to acquire and acknowledges it holds any Term Priority Collateral actually in its possession or control (or in the possession or control of its agents or bailees) on behalf of itself and any assignee and the ABL Collateral Agent and any assignee solely for the purpose of perfecting the security interest granted under the Term Loan Documents and the ABL Loan Documents, subject to the terms and conditions of this Section 5.6.

(f) Term Priority Collateral — Exclusive Treatment. Until the Discharge of Term Obligations has occurred, the Term Collateral Agent shall be entitled to deal with the Term Priority Collateral in accordance with the terms of the Term Loan Documents as if the Liens of the ABL Collateral Agent under the ABL Security Documents did not exist. The rights of the ABL Collateral Agent shall at all times be subject to the terms of this Agreement and, with respect to the Term Priority Collateral, to the Term Collateral Agent's rights under the Term Loan Documents.

(g) Term Priority Collateral—Obligations of Collateral Agents. (i) The Term Collateral Agent shall have no obligation whatsoever to the Term Creditors, the ABL Collateral Agent or any ABL Creditor to assure that the Term Priority Collateral is genuine or owned by

any of the Grantors or to preserve any rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the Term Collateral Agent under this Section 5.6 shall be limited solely to holding any Pledged Collateral and Term Priority Collateral actually in its possession or control as bailee in accordance with this Section 5.6.

(ii) After the Discharge of Term Obligations, the ABL Collateral Agent shall have no obligations whatsoever to the ABL Creditors to assure that the Term Priority Collateral is genuine or owned by any of the Grantors or to preserve any rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the ABL Collateral Agent under this Section 5.6 shall be limited solely to holding any Term Priority Collateral actually in its possession or control as bailee in accordance with this Section 5.6.

(h) Term Priority Collateral — Delivery of Remaining Collateral Upon the Discharge of Term Obligations, the Term Collateral Agent shall deliver the remaining Term Priority Collateral (if any) (or proceeds thereof) in its possession, together with any necessary endorsements, (i) to the ABL Collateral Agent, unless the Discharge of ABL Obligations has occurred and (ii) if preceding clause (i) does not apply, to the relevant Grantor (in each case, so as to allow such Person to obtain control of such Term Priority Collateral). The Term Collateral Agent further agrees to take all other action reasonably requested by such Person in connection with such Person's obtaining a first-priority interest in the Term Priority Collateral or as a court of competent jurisdiction may otherwise direct.

(i) No Fiduciary Relationships. No Collateral Agent acting pursuant to this Section 5.6 shall have by reason of the ABL Security Documents, the Term Security Documents, this Agreement or any other document a fiduciary relationship in respect of any other Collateral Agent, any ABL Creditor or any Term Creditor.

SECTION 5.7 When Discharge of Obligations Deemed to Not Have Occurred (a) ABL Priority Collateral. If the Borrower enters into any Refinancing of any ABL Loan Document evidencing an ABL Obligation, then any Discharge of ABL Obligations effected thereby shall automatically be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing ABL Loan Document shall automatically be treated as ABL Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of the ABL Priority Collateral and the Term Priority Collateral set forth herein, and the collateral agent under such ABL Loan Documents shall be the ABL Collateral Agent for all purposes of this Agreement. Upon receipt of a notice stating that the Borrower has entered into a new ABL Loan Document (which notice shall include the identity of the new agent, such agent, the "New ABL Agent"), the Term Collateral Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Borrower or such New ABL Agent may reasonably request in order to provide to the New ABL Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. In addition, a Discharge of ABL Obligations shall be deemed not to have occurred in the circumstances described in Section 6.5.

(b) Term Priority Collateral. If the Borrower enters into any Refinancing of any Term Loan Document evidencing a Term Obligation, then any Discharge of Term

Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing Term Loan Document shall automatically be treated as Term Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of the ABL Priority Collateral and the Term Priority Collateral set forth herein, and the collateral agent under such Term Loan Documents shall be the Term Collateral Agent for all purposes of this Agreement. Upon receipt of a notice stating that the Borrower has entered into a new Term Loan Document in accordance with the foregoing requirements (which notice shall include the identity of the new agent, such agent, the "New Term Agent"), the ABL Collateral Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Borrower or such New Term Agent may reasonably request in order to provide to the New Term Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. In addition, a Discharge of Term Obligations shall be deemed not to have occurred in the circumstances described in Section 6.5.

SECTION 5.8 Option to Purchase. (a) Option to Purchase of Term Creditors. If all of the ABL Obligations shall have been accelerated or following the non-payment of the ABL Obligations after the Revolving Termination Date (as such term is defined in the ABL Credit Agreement), the Term Creditors shall have the option at any time upon at least five (5) Business Days' prior written notice by the Term Administrative Agent to the ABL Administrative Agent (with copies to the Borrower) to purchase all, and not less than all, of the ABL Obligations from the ABL Administrative Agent and the ABL Creditors. Such notice from the Term Administrative Agent to the ABL Administrative Agent shall be irrevocable.

(b) Option to Purchase of Term Creditors — Sale Without Consent. On the date specified by the Term Administrative Agent in the notice described in Section 5.8(a) (which shall not be less than five (5) Business Days, nor more than ten (10) Business Days, after the receipt by the ABL Administrative Agent of the notice from the Term Administrative Agent of the election by the Term Creditors to exercise such option), the ABL Administrative Agent and the ABL Creditors shall sell to the Term Creditors exercising such option, and such Term Creditors shall purchase from the ABL Administrative Agent and the ABL Creditors, the ABL Obligations without the prior written consent of the Borrower or any other Grantor.

(c) Option to Purchase of Term Creditors — Procedure. Upon the date of such purchase and sale, the Term Creditors that have exercised such option shall, pursuant to documentation in form and substance reasonably satisfactory to the ABL Administrative Agent, (i) pay to the ABL Creditors as the purchase price therefor the full amount of all the ABL Obligations then outstanding and unpaid (including principal, reimbursement obligations in respect of, if any, letters of credit, the credit exposure of the ABL Creditors under ABL Hedge Agreements, interest, fees and expenses, including reasonable attorneys' fees and legal expenses) at par, (ii) cash collateralize any letters of credit outstanding under the ABL Credit Agreement in an amount reasonably satisfactory to the ABL Agent but in no event greater than 103% of the aggregate undrawn face amount thereof, and (iii) agree to reimburse the ABL Administrative Agent and the ABL Creditors for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit as described above and any checks or other payments provisionally credited to the ABL Obligations, and/or as to which the ABL

Administrative Agent or any ABL Creditor has not yet received final payment. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the ABL Administrative Agent for the ratable account of the ABL Administrative Agent and the ABL Creditors in New York, New York, as the ABL Administrative Agent may designate in writing to the Term Administrative Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the Term Creditors that have exercised such option to the bank account designated by the ABL Administrative Agent are received in such bank account prior to 1:00 p.m., New York City time and interest shall be calculated to and including such Business Day if the amounts so paid by such Term Creditors to the bank account designated by the ABL Administrative Agent are received in such bank account later than 1:00 p.m., New York City time on such Business Day.

(d) Option to Purchase of Term Creditors — Without Recourse. Such purchase shall be expressly made without recourse, representation or warranty of any kind by the ABL Administrative Agent or any ABL Creditors as to the ABL Obligations owed to such Person or otherwise, except that each such Person shall represent

and warrant: (i) the amount of the ABL Obligations being sold by it, (ii) that such Person has not created any Lien on any ABL Obligation being sold by it and (iii) that such Person has the right to assign ABL Obligations being assigned by it and its assignment is duly authorized.

(c) Option to Purchase of Term Creditors — Foreclosure The ABL Administrative Agent agrees that prior to foreclosing upon all or a material portion of the ABL Priority Collateral, it will provide the Term Administrative Agent with at least five (5) days' notice of its intent to commence such foreclosure. If the Term Administrative Agent shall give the ABL Administrative Agent written notice of any Term Creditor's intention to exercise the purchase option provided under this Section 5.8 prior to the foreclosure by the ABL Administrative Agent on any ABL Priority Collateral, the ABL Administrative Agent shall not continue such foreclosure action or initiate any other action to sell or otherwise realize upon any of the ABL Priority Collateral so long as the purchase and sale with respect to the ABL Obligations provided for herein shall have closed within ten (10) Business Days thereafter and the ABL Administrative Agent and the ABL Creditors shall have received payment in full of the ABL Obligations as provided for herein within such ten (10) Business Day period.

SECTION 5.9 Entry Upon Premises by the ABL Collateral Agent and the ABL Creditors (a) ABL Priority Collateral — Cooperation in Enforcement Action. If the ABL Collateral Agent takes any enforcement action with respect to the ABL Priority Collateral, the Term Secured Parties (i) shall cooperate with the ABL Collateral Agent (at the sole cost and expense of the ABL Collateral Agent and subject to the condition that the Term Secured Parties shall have no obligation or duty to take any action or refrain from taking any action that could reasonably be expected to result in the incurrence of any liability or damage to the Term Secured Parties) in its efforts to enforce its security interest in the ABL Priority Collateral and to finish any work-in-process and assemble the ABL Priority Collateral, (ii) shall not take any action designed or intended to hinder or restrict in any respect the ABL Collateral Agent from enforcing its security interest in the ABL Priority Collateral or from finishing any work-in-process or assembling the ABL Priority Collateral, and (iii) shall permit the ABL Collateral Agent, its employees, agents, advisers and representatives, at the sole cost and expense of the ABL Secured Parties and upon reasonable advance notice, to enter upon and use the Term Priority Collateral

32

(including (x) equipment, processors, computers and other machinery related to the storage or processing of records, documents or files and (y) intellectual property), for a period not to exceed 180 days after the taking of such enforcement action, for purposes of (A) assembling and storing the ABL Priority Collateral and completing the processing of and turning into finished goods of any ABL Priority Collateral consisting of work-in-process, (B) selling any or all of the ABL Priority Collateral located on such Term Priority Collateral, whether in bulk, in lots or to customers in the ordinary course of business or otherwise, (C) removing any or all of the ABL Priority Collateral located on such Term Priority Collateral, or (D) taking reasonable actions to protect, secure, and otherwise enforce the rights of the ABL Secured Parties in and to the ABL Priority Collateral, and the Term Secured Parties hereby irrevocably grant to the ABL Collateral Agent a non-exclusive license or other right to use, for such time and without charge, such intellectual property, equipment, processors, computers and other machinery as it pertains to the ABL Priority Collateral in finishing, assembling, advertising for sale and/or selling any ABL Priority Collateral; provided, however, that nothing contained in this Agreement shall restrict the rights of the ABL Collateral Agent from selling, assigning or otherwise transferring any ABL Priority Collateral prior to the expiration of such 180-day period if the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 5.9. If any stay or other order prohibiting the exercise of remedies with respect to the ABL Priority Collateral has been entered by a court of competent jurisdiction, such 180-day period shall be tolled during the pendency of any such stay or other order. If the ABL Collateral Agent conducts a public auction or private sale of the ABL Priority Collateral at any of the real property included within the ABL Priority Collateral, the ABL Collateral Agent shall provide the Term Collateral Agent with reasonable notice and use reasonable efforts to hold such auction or sale in a manner which would not unduly disrupt the Term Collateral Agent's use of such real property.

(b) ABL Priority Collateral—Responsibilities of ABL Secured Parties with respect to Enforcement Action During the period of actual occupation, use or control by the ABL Secured Parties or their agents or representatives of any Term Priority Collateral, the ABL Secured Parties shall (i) be responsible for the ordinary course third party expenses related thereto, including costs with respect to heat, light, electricity, water and real property taxes with respect to that portion of any premises so used or occupied, and (ii) be obligated to repair at their expense any physical damage to such Term Priority Collateral or other assets or property resulting from such occupancy, use or control, and to leave such Term Priority Collateral or other assets or property in substantially the same condition as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted. The ABL Secured Parties jointly and severally agree to pay, indemnify and hold the Term Collateral Agent and their respective officers, directors, employees and agents harmless from and against any liability, cost, expense, loss or damages, including legal fees and expenses, resulting from the gross negligence or willful misconduct of the ABL Collateral Agent or any of its agents, representatives or invitees in its or their operation of such facilities. Notwithstanding the foregoing, in no event shall the ABL Secured Parties have any liability to the Term Secured Parties pursuant to this Section 5.9 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Priority Collateral existing prior to the date of the exercise by the ABL Secured Parties of their rights under this Section 5.9 and the ABL Secured Parties shall have no duty or liability to maintain the Term Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by the ABL Secured Parties, or for any diminution in the value of the Term Priority Collateral that results solely from ordinary wear

33

and tear resulting from the use of the Term Priority Collateral by the ABL Secured Parties in the manner and for the time periods specified under this Section 5.9. Without limiting the rights granted in this paragraph, the ABL Secured Parties shall cooperate with the Term Secured Parties in connection with any efforts made by the Term Secured Parties to sell the Term Priority Collateral.

SECTION 5.10 Rights under Permits and Licenses. The Term Collateral Agent agrees that if the ABL Collateral Agent shall require rights available under any permit or license controlled by the Term Collateral Agent in order to realize on any ABL Priority Collateral, the Term Collateral Agent shall take all such actions as shall be available to it (at the sole expense of the Grantors), consistent with applicable law and reasonably requested by the ABL Collateral Agent to make such rights available to the ABL Collateral Agent, subject to the Liens on the Term Priority Collateral created under the Term Security Documents to secure the Term Obligations. The ABL Collateral Agent agrees that if the Term Collateral Agent shall require rights available under any permit or license controlled by the ABL Collateral Agent in order to realize on any Term Priority Collateral, the ABL Collateral Agent shall take all such actions as shall be available to it (at the sole expense of the Grantors), consistent with applicable law and reasonably requested by the Term Collateral Agent to make such rights available to the Term Collateral Agent, subject to the Liens on the ABL Priority Collateral created under the ABL Security Documents to secure the ABL Obligations.

ARTICLE VI

INSOLVENCY OR LIQUIDATION PROCEEDINGS

SECTION 6.1 Finance and Sale Issues. (a) ABL Creditor Post-Petition Financing (i) If the Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the ABL Collateral Agent (acting at the direction of the Required ABL Creditors) shall desire to permit the Borrower or any other Grantor to obtain financing (including on a priming basis), from the ABL Creditors under Section 362, 363 or 364 of the Bankruptcy Code or debtor-in-possession financing under any other Bankruptcy Law (each, an "ABL Creditor Post-Petition Financing"), and provided that (A) the aggregate amount of ABL Obligations outstanding as of the commencement of the Insolvency or Liquidation Proceeding is at least \$25,000,000 and (B) the Exposure Amount does not exceed the Maximum Exposure Amount at any time during the pendency of the Insolvency or Liquidation Proceeding, then, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each agree that it will not oppose or raise any objection to or contest (or join with or support any third party opposing, objecting to or contesting), on any basis applicable solely to a secured creditor in such Insolvency or Liquidation Proceeding, such use or provision of ABL Creditor Post-Petition Financing and will not request adequate protection or any other relief in to which a secured creditor may otherwise be entitled in connection therewith (except as expressly agreed in writing by the ABL Collateral Agent or to the extent permitted by Section 6.3) and, to the extent the Liens securing the ABL

ABL Creditor Post-Petition Financing (and all Obligations relating thereto), and the Liens securing the Term Obligations shall have the same priority with respect to the ABL Priority Collateral relative to the Liens securing the ABL Obligations as if such ABL Creditor Post-Petition Financing had not occurred and the Liens on the Term Priority Collateral shall be deemed to be subordinated, without any further action on the part of any Person, to the Liens securing such ABL Creditor Post-Petition Financing (and all Obligations relating thereto). Furthermore, and notwithstanding anything to the contrary contained above in this Section 6.1(a), the Term Collateral Agent and the Term Creditors may object for any reason and on any basis (whether assertable by, or applicable to, a secured or general unsecured creditor, and including without limitation, any objection based on the lack of adequate protection) to any ABL Creditor Post-Petition Financing which (A) causes the Exposure Amount to exceed the Maximum Exposure Amount, or (B) is made or permitted to be made at any time that the Exposure Amount exceeds the Maximum Exposure Amount. Notwithstanding anything herein to the contrary, and without limiting the provisions of the immediately preceding sentence, this Section 6.1(a)(i) does not prevent the Term Creditors from (i) objecting to any ABL Post-Petition Financing that purports to govern or control the provisions or content of a plan of reorganization (other than providing for satisfaction in full in cash of the ABL Creditor Post-Petition Financing on or prior to the effective date of such plan of reorganization) or (ii) proposing any other post-petition financing to the Borrower or the Bankruptcy Court.

(ii) The Term Collateral Agent, on behalf of itself and the other Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each agree that solely in its capacity as a secured creditor and not as an unsecured creditor, it will consent to and raise no objection to, oppose or contest (or join with or support any third party opposing, objecting to or contesting), a sale or other disposition of any ABL Priority Collateral in the context of an Insolvency or Liquidation Proceeding free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code or any other court approved sale pursuant to any other Insolvency and Liquidation Proceeding if the ABL Creditors have consented to such sale or disposition of such assets; provided, that (i) the net cash proceeds from the sale or disposition are applied first to the ABL Obligations and (ii) any such sale or disposition must be approved by the bankruptcy court (or other court) with jurisdiction over the sale (the "Bankruptcy Court") by an order that: (a) contains a specific finding that the sale or disposition being approved is commercially reasonable; and (b) provides that any consideration received in connection with such sale or disposition that exceeds the amount of the ABL Obligations shall be used to satisfy the Term Obligations or shall remain encumbered by the Term Obligations with the same priority and subject to the same limitations set forth herein with respect to their Liens on the ABL Priority Collateral.

(b) Term Creditor Post-Petition Financing. (i) If the Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the Term Collateral Agent (acting at the direction of the Required Term Creditors) shall desire to permit the Borrower or any other Grantor to obtain financing (including on a priming basis), from the Term Creditors under Section 362, 363 or 364 of the Bankruptcy Code or debtor-in-possession financing under any other Bankruptcy Law (each, a "Term Creditor Post-Petition Financing"), and provided that (A) the aggregate amount of ABL Obligations outstanding as of the

commencement of the Insolvency or Liquidation Proceeding is less than \$25,000,000 and (B) the Exposure Amount does not exceed the Maximum Exposure Amount at any time during the pendency of the Insolvency or Liquidation Proceeding, then the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that it will not oppose or raise any objection to or contest (or join with or support any third party opposing, objecting to or contesting), on any basis applicable solely to a secured creditor in such Insolvency or Liquidation Proceeding, such use or provision of Term Creditor Post-Petition Financing and, to the extent the Liens securing the Term Obligations are subordinated to or pari passu with such Term Creditor Post-Petition Financing, its Liens on the Term Priority Collateral shall be deemed to be subordinated, without any further action on the part of any Person, to the Liens securing such Term Creditor Post-Petition Financing (and all Obligations relating thereto). Furthermore, and notwithstanding anything to the contrary contained above in this Section 6.1(b), the ABL Collateral Agent and the ABL Creditors may object for any reason and on any basis (whether assertable by, or applicable to, a secured or general unsecured creditor, and including, without limitation, any objection based on the lack of adequate protection) to any Term Creditor Post-Petition Financing which (A) causes the Exposure Amount to exceed the Maximum Exposure Amount or (B) is made or permitted to be made at any time that the Exposure Amount exceeds the Maximum Exposure Amount. Notwithstanding anything herein to the contrary, and without limiting the provisions of the immediately preceding sentence, this Section 6.1(b)(i) does not prevent the ABL Creditors from (i) objecting to any Term Post-Petition Financing that purports to govern or control the provisions or content of a plan of reorganization (other than providing for satisfaction in full in cash of the Term Creditor Post-Petition Financing on or prior to the effective date of such plan of reorganization) or (ii) proposing any other post-petition financing to the Borrower or the Bankruptcy Court.

(ii) The ABL Collateral Agent, on behalf of itself and the other ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that solely in its capacity as a secured creditor and not as an unsecured creditor, it will consent to and raise no objection to, oppose or contest (or join with or support any third party opposing, objecting to or contesting), a sale or other disposition of any Term Priority Collateral in the context of an Insolvency or Liquidation Proceeding free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code or any court approved sale pursuant to any other Insolvency or Liquidation Proceeding if the Term Creditors have consented to such sale or disposition of such assets; provided that (i) the net cash proceeds from the sale or disposition are applied first to the Term Obligations and (ii) any such sale or disposition must be approved by the Bankruptcy Court with jurisdiction over the sale by an order that: (a) contains a specific finding that the sale or disposition being approved is commercially reasonable; and (b) provides that any consideration received in connection with such sale or disposition that exceeds the amount of the Term Obligations shall be used to satisfy the ABL Obligations, or shall remain encumbered by the ABL Obligations, with the same priority and subject to the same limitations set forth herein with respect to their Liens on the Collateral.

SECTION 6.2 Relief from the Automatic Stay.

(a) ABL Priority Collateral. Until the Discharge of ABL Obligations has occurred, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) agree that none of them shall seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in any Insolvency or Liquidation Proceeding in respect of the ABL Priority Collateral, without the prior written consent of the ABL Collateral Agent.

(b) Term Priority Collateral. Until the Discharge of Term Obligations has occurred, the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), agree that none of them shall seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in any Insolvency or Liquidation Proceeding in respect of the Term Priority Collateral, without the prior written consent of the Term Collateral Agent.

SECTION 6.3 Adequate Protection. (a) ABL Priority Collateral. (i) The Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) each agree that, until the Discharge of ABL Obligations has occurred or the termination of the Liens on the ABL Priority Collateral of the ABL Collateral Agent, on behalf of the ABL Creditors, has occurred, with respect to the ABL Priority Collateral, none of

them shall oppose, object to or contest (or join with or support any third party opposing, objecting to or contesting) (a) any request by the ABL Collateral Agent or the ABL Creditors for adequate protection in any Insolvency or Liquidation Proceeding (or any granting of such request) or (b) any objection by the ABL Collateral Agent or the ABL Creditors to any motion, relief, action or proceeding based on the ABL Collateral Agent or the ABL Creditors claiming a lack of adequate protection.

(ii) [RESERVED]

(iii) Except as set forth in this Article VI, the Term Collateral Agent and the Term Creditors shall not be limited from seeking adequate protection with respect to their rights in the ABL Priority Collateral in an Insolvency or Liquidation Proceeding (including adequate protection in the form of cash payments of interest or otherwise).

(b) Term Priority Collateral. (i) The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that, until the Discharge of Term Obligations has occurred or the termination of the Liens on the Term Priority Collateral of the Term Collateral Agent, on behalf of the Term Creditors, has occurred, with respect to the Term Priority Collateral, none of them shall oppose, object to or contest (or join with or support any third party opposing, objecting to or contesting) (a) any request by the Term Collateral Agent or the Term Creditors for adequate protection in any Insolvency or Liquidation Proceeding (or any granting of such request) or (b) any objection by the Term Collateral Agent or the Term Creditors to any motion, relief, action or proceeding based on the Term Collateral Agent or the Term Creditors claiming a lack of adequate protection.

37

(ii) [RESERVED]

(iii) Except as set forth in this Article VI, the ABL Collateral Agent and the ABL Creditors shall not be limited from seeking adequate protection with respect to their rights in the Term Priority Collateral in an Insolvency or Liquidation Proceeding (including adequate protection in the form of cash payments of interest or otherwise).

SECTION 6.4 No Waiver; Voting Rights. (a) ABL Priority Collateral. (i) Nothing contained herein shall prohibit or in any way limit the ABL Collateral Agent or any ABL Creditor from objecting on any basis in any Insolvency or Liquidation Proceeding or otherwise to any action taken with respect to the ABL Priority Collateral by the Term Collateral Agent or any Term Creditor, including the seeking by the Term Collateral Agent or any Term Creditor of adequate protection or the assertion by the Term Collateral Agent or any Term Creditor of any of its rights and remedies under the Term Loan Documents or otherwise. In any Insolvency or Liquidation Proceeding, neither the Term Collateral Agent nor any other Term Creditor shall propose or support any plan of reorganization, plan or arrangement or disclosure statement, or join with or support any third party in doing so, to the extent the terms of such plan or disclosure statement are inconsistent with the terms of this Agreement as to the treatment of ABL Priority Collateral.

(b) Term Priority Collateral. (i) Nothing contained herein shall prohibit or in any way limit the Term Collateral Agent or any Term Creditor from objecting on any basis in any Insolvency or Liquidation Proceeding or otherwise to any action taken with respect to the Term Priority Collateral by the ABL Collateral Agent or any ABL Creditor, including the seeking by the ABL Collateral Agent or any ABL Creditor of adequate protection or the assertion by the ABL Collateral Agent or any ABL Creditor of any of its rights and remedies under the ABL Loan Documents or otherwise. In any Insolvency or Liquidation Proceeding, neither the ABL Collateral Agent nor any other ABL Creditor shall propose or support any plan of reorganization, plan or arrangement or disclosure statement, or join with or support any third party in doing so, to the extent the terms of such plan or disclosure statement are inconsistent with the terms of this Agreement as to the treatment of Term Priority Collateral.

SECTION 6.5 Preference Issues. (a) Reinstatement of ABL Obligations. If any ABL Creditor is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower or any other Grantor any amount (an "ABL Recovery"), then the ABL Obligations shall be reinstated to the extent of such ABL Recovery and the ABL Creditors shall be entitled to a reinstatement of ABL Obligations with respect to all such recovered amounts. In such event, any Discharge of ABL Obligations for all purposes of this Agreement shall be deemed to have not occurred (unless and until same subsequently occurs with respect to the ABL Obligations after giving effect to the provisions to this Section 6.5(a)). If this Agreement shall have been terminated prior to such ABL Recovery, this Agreement shall be reinstated in full force and effect (and any prior Discharge of ABL Obligations shall be deemed not to have occurred), and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Any amounts received by the Term Collateral Agent or any Term Creditor on account of the Term Obligations from proceeds of ABL Priority Collateral, after the termination of this

38

Agreement (or any prior Discharge of ABL Obligations) shall, in the event of a reinstatement pursuant to this Section 6.5(a), be held in trust for and paid over to the ABL Collateral Agent for the benefit of the ABL Creditors, for application to the reinstated ABL Obligations.

(b) Reinstatement of Term Obligations. If any Term Creditor is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower or any other Grantor any amount (a "Term Recovery"), then the Term Obligations shall be reinstated to the extent of such Term Recovery and the Term Creditors shall be entitled to a reinstatement of Term Obligations with respect to all such recovered amounts. In such event, any Discharge of Term Obligations for all purposes of this Agreement shall be deemed to have not occurred (unless and until same subsequently occurs with respect to the Term Obligations after giving effect to the provisions to this Section 6.5(b)). If this Agreement shall have been terminated prior to such Term Recovery, this Agreement shall be reinstated in full force and effect (and any prior Discharge of Term Obligations shall be deemed not to have occurred), and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Any amounts received by the ABL Collateral Agent or any ABL Creditor on account of the ABL Obligations from proceeds of Term Priority Collateral, after the termination of this Agreement (or any prior Discharge of Term Obligations) shall, in the event of a reinstatement pursuant to this Section 6.5(b), be held in trust for and paid over to the Term Collateral Agent for the benefit of the Term Creditors, for application to the reinstated Term Obligations.

(c) This Section 6.5 shall survive termination of this Agreement.

SECTION 6.6 Post-Petition Interest. (a) Claims by ABL Creditors. Neither the Term Collateral Agent nor any Term Creditor shall oppose or seek to challenge any claim by the ABL Collateral Agent or any ABL Creditor for allowance in any Insolvency or Liquidation Proceeding of ABL Obligations consisting of post-petition or post-filing interest, fees or expenses to the extent of the value of the ABL Creditors' Lien on (i) the ABL Priority Collateral (without regard to the existence of the Term Creditors' Lien thereon) and (ii) the Term Priority Collateral (after taking into account the Term Creditors' Lien thereon).

(b) Claims by Term Creditors. Neither the ABL Collateral Agent nor the ABL Creditors shall oppose or seek to challenge any claim by the Term Collateral Agent or any Term Creditor for allowance in any Insolvency or Liquidation Proceeding of Term Obligations consisting of post-petition or post-filing interest, fees or expenses to the extent of the value of the Term Creditors' Lien on (i) the Term Priority Collateral (without regard to the existence of the ABL Creditors' Lien thereon) and (ii) the ABL Priority Collateral (after taking into account the ABL Creditors' Lien thereon).

(c) [RESERVED]

(d) Separate Classes. Without limiting the foregoing, it is the intention of the parties hereto that (and to the maximum extent permitted by law the

parties hereto agree that) (x) the Term Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the ABL Obligations (and the security therefor), (y) the ABL

Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the Term Obligations (and the security therefor).

SECTION 6.7 Voting for Plan of Reorganization. Each of the ABL Creditors, and the Term Creditors shall be entitled to vote as separate classes with respect to any plan of reorganization or arrangement in connection with any Insolvency or Liquidation Proceeding; provided, however, that the ABL Administrative Agent, on behalf of itself and the ABL Creditors and the Term Administrative Agent on behalf of itself and the Term Creditors agree that neither the ABL Administrative Agent nor the Term Administrative Agent nor any ABL Creditor nor Term Creditor shall take any action or vote in any way which supports any plan of reorganization or arrangement that is inconsistent with the terms of this Agreement.

ARTICLE VII

RELIANCE; WAIVERS; ETC.

SECTION 7.1 Reliance. Other than any reliance on the terms of this Agreement, the ABL Collateral Agent, on behalf of itself and the ABL Creditors under its ABL Loan Documents, acknowledges that it and such ABL Creditors have, independently and without reliance on the Term Collateral Agent or any Term Creditor, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into such ABL Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the ABL Credit Agreement or this Agreement. The Term Collateral Agent, on behalf of itself and the Term Creditors, acknowledges that it and the Term Creditors have, independently and without reliance on the ABL Collateral Agent or any ABL Creditor, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Term Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Term Loan Documents or this Agreement.

SECTION 7.2 No Warranties or Liability. ABL Collateral Agent, on behalf of itself and the ABL Creditors under the ABL Loan Documents, acknowledge and agree that each of the Term Collateral Agent and the Term Creditors have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Term Loan Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The Term Creditors will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Term Collateral Agent, on behalf of itself and the Term Creditors under the Term Loan Documents, acknowledge and agree that each of the ABL Collateral Agent and the ABL Creditors have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the ABL Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The ABL Creditors will be entitled to manage and supervise their respective loans and extensions of credit under their respective ABL Documents in accordance with law and as they

may otherwise, in their sole discretion, deem appropriate. The Term Collateral Agent and the Term Creditors shall have no duty to the ABL Collateral Agent or any of the ABL Creditors, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Borrower or any Grantor (including the ABL Loan Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with. The ABL Collateral Agent and the ABL Creditors shall have no duty to the Term Collateral Agent or any of the Term Creditors, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Borrower or any Grantor (including the ABL Loan Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

SECTION 7.3 No Waiver of Lien Priorities. (a) Failure to Act. (i) No right of the ABL Creditors, the ABL Collateral Agent or any of them to enforce any provision of this Agreement or any ABL Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Borrower or any other Grantor or by any act or failure to act by any ABL Creditor or the ABL Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the ABL Loan Documents or any of the Term Loan Documents, regardless of any knowledge thereof which the ABL Collateral Agent or the ABL Creditors, or any of them, may have or be otherwise charged with.

(ii) No right of the Term Creditors, the Term Collateral Agent or any of them to enforce any provision of this Agreement or any Term Loan Document (subject to the provisions of this Agreement) shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Borrower or any other Grantor or by any act or failure to act by any Term Creditor or the Term Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Term Loan Documents or any ABL Loan Document, regardless of any knowledge thereof which the Term Collateral Agent or the Term Creditors, or any of them, may have or be otherwise charged with.

(b) Acts by ABL Creditors. Without in any way limiting the generality of Section 7.3(a) (but subject to the rights of the Borrower and the other Grantors under the ABL Loan Documents), the ABL Creditors, the ABL Collateral Agent and any of them may, at any time and from time to time in accordance with the ABL Loan Documents, this Agreement (including Section 5.3) and/or applicable law, without the consent of, or notice to, the Term Collateral Agent or any Term Creditor without incurring any liabilities to the Term Collateral Agent or any other Term Creditor and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the Term Collateral Agent or any Term Creditor is affected, impaired or extinguished thereby) do any one or more of the following, but subject to the limitations set forth in this Agreement:

(i) make loans and advances to any Grantor or issue, guaranty or obtain letters of credit for account of any Grantor or otherwise extend credit to any Grantor, in any amount and on any terms, whether pursuant to a commitment or as a

discretionary advance and whether or not any default or event of default or failure of condition is then continuing;

(ii) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the ABL Obligations or any Lien on any ABL Priority Collateral or guaranty thereof or any liability of the Borrower or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the ABL Obligations, subject to Section 5.3) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens with respect to the ABL Priority Collateral held by the ABL Collateral Agent or any of the ABL Creditors, the ABL Obligations or any of the ABL Loan Documents;

- (iii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the ABL Priority Collateral or any liability of the Borrower or any other Grantor to the ABL Creditors or the ABL Collateral Agent, or any liability incurred directly or indirectly in respect thereof;
- (iv) settle or compromise any ABL Obligation or any other liability of the Borrower or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the ABL Obligations) in any manner or order;
- (v) exercise or delay in or refrain from exercising any right or remedy against the Borrower or any other Grantor or any other Person or with respect to any security, elect any remedy and otherwise deal freely with the Borrower, any other Grantor or any ABL Priority Collateral and any security and any guarantor or any liability of the Borrower or any other Grantor to the ABL Creditors or any liability incurred directly or indirectly in respect thereof; and
- (vi) release or discharge any ABL Obligation or any guaranty thereof or any agreement or obligation of any Grantor or any other Person with respect thereto.
- (c) Waivers by the Term Collateral Agent. The Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the ABL Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.
- (d) Acts by Term Creditors. Without in any way limiting the generality of Section 7.3(a) (but subject to the rights of the Borrower and the other Grantors under the Term Loan Documents), the Term Creditors, the Term Collateral Agent and any of them may, at any time and from time to time in accordance with the Term Loan Documents, this Agreement

42

(including Section 5.3) and/or applicable law, without the consent of, or notice to, the ABL Collateral Agent or any ABL Creditor without incurring any liabilities to the ABL Collateral Agent or any ABL Creditor and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the ABL Collateral Agent or any ABL Creditor with respect to the Term Priority Collateral is affected, impaired or extinguished thereby), do any one or more of the following, but subject to the limitations set forth in this Agreement:

- (i) make loans and advances to any Grantor or issue, guaranty or obtain letters of credit for account of any Grantor or otherwise extend credit to any Grantor, in any amount and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any default or event of default or failure of condition is then continuing;
- (ii) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Term Obligations or any Lien on any Term Priority Collateral or guaranty thereof or any liability of the Borrower or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Term Obligations, subject to Section 5.3) or, subject to the terms hereof (including Section 5.3), otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the Term Collateral Agent or any of the Term Creditors, the Term Obligations or any of the Term Loan Documents;
- (iii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Term Priority Collateral or any liability of the Borrower or any other Grantor to the Term Creditors or the Term Collateral Agent, or any liability incurred directly or indirectly in respect thereof;
- (iv) settle or compromise any Term Obligation or any other liability of the Borrower or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the Term Obligations) in any manner or order;
- (v) except or otherwise restricted by the Agreement, including Section 5.3 and 5.4, and by applicable law, exercise or delay in or refrain from exercising any right or remedy against the Borrower or any other Grantor or any other Person or with respect to any security, elect any remedy and otherwise deal freely with the Borrower, any other Grantor or any Term Priority Collateral and any security and any guarantor or any liability of the Borrower or any other Grantor to the Term Creditors or any liability incurred directly or indirectly in respect thereof; and
- (vi) release or discharge any Term Obligation or any guaranty thereof or any agreement or obligation of any Grantor or any other Person with respect thereto.

43

(e) Waivers by the ABL Collateral Agent. The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

SECTION 7.4 Waiver of Liability: Indemnity. (a) ABL Priority Collateral. With respect to the ABL Priority Collateral, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) each agree that the ABL Creditors and the ABL Collateral Agent shall have no liability to any of the Term Collateral Agent or any Term Creditors; and the Term Collateral Agent, on behalf of itself and the Term Creditors; and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each hereby waive any claim against any ABL Creditor (or the ABL Collateral Agent), arising out of any and all actions which the ABL Creditors or the ABL Collateral Agent may take or permit or omit to take with respect to: (i) the ABL Loan Documents (including, without limitation, any failure to perfect or obtain perfected security interests in the ABL Priority Collateral), (ii) the collection of the ABL Obligations or (iii) the foreclosure upon, or sale, liquidation or other disposition of, any ABL Priority Collateral. The Term Collateral Agent, on behalf of itself and the Term Creditors and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each agree that the ABL Creditors and the ABL Collateral Agent have no duty, express or implied, fiduciary or otherwise, to any of them in respect of the maintenance or preservation of the ABL Priority Collateral, the ABL Obligations or otherwise. Neither the ABL Collateral Agent nor any other ABL Creditor nor any of their respective directors, officers, employees or agents will be liable for failure to demand, collect or realize upon any of the ABL Priority Collateral or for any delay in doing so, or will be under any obligation to sell or otherwise dispose of any ABL Priority Collateral upon the request of any other Grantor or upon the request of the Term Collateral Agent, any other holder of Term Obligations or any other Person or to take any other action whatsoever with regard to the ABL Priority Collateral or any part thereof. Without limiting the foregoing, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each agree that neither the ABL Collateral Agent nor any other ABL Creditor (in directing the Collateral Agent to take any action with respect to the ABL Priority Collateral) shall have any duty or obligation to realize first upon any type of ABL Priority Collateral or to sell, dispose of or otherwise liquidate all or any portion of the ABL Priority Collateral in any manner, including as a result of the application of the principles of marshaling or otherwise, that would maximize the return to any class of Creditors holding Obligations of any type (whether ABL Obligations or Term

Obligations), notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by such class of Creditors from such realization, sale, disposition or liquidation.

(b) Term Priority Collateral. With respect to the Term Priority Collateral, the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that the Term Creditors and the Term Collateral Agent shall have no liability to the ABL Collateral Agent or

44

any ABL Creditors; and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents) each hereby waive any claim against any Term Creditor (or the Term Collateral Agent), arising out of any and all actions which the Term Creditors or the Term Collateral Agent may take or permit or omit to take with respect to: (i) the Term Loan Documents (including, without limitation, any failure to perfect or obtain perfected security interests in the Term Collateral), (ii) the collection of the Term Obligations or (iii) the foreclosure upon, or sale, liquidation or other disposition of, any Term Priority Collateral. The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that the Term Creditors and the Term Collateral Agent have no duty, express or implied, fiduciary or otherwise, to any of them in respect of the maintenance or preservation of the Term Priority Collateral, the Term Obligations or otherwise. Neither the Term Collateral Agent nor any other Term Creditor nor any of their respective directors, officers, employees or agents will be liable for failure to demand, collect or realize upon any of the Term Priority Collateral or for any delay in doing so, or will be under any obligation to sell or otherwise dispose of any Term Priority Collateral upon the request of any other Grantor or upon the request of the ABL Collateral Agent, any other holder of ABL Obligations or any other Person or to take any other action whatsoever with regard to the Term Priority Collateral or any part thereof. Without limiting the foregoing, the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that neither the Term Collateral Agent nor any other Term Creditor (in directing the Collateral Agent to take any action with respect to the Term Priority Collateral) shall have any duty or obligation to realize first upon any type of Term Priority Collateral or to sell, dispose of or otherwise liquidate all or any portion of the Term Priority Collateral in any manner, including as a result of the application of the principles of marshaling or otherwise, that would maximize the return to any class of Creditors holding Obligations of any type (whether Term Obligations or ABL Obligations), notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by such class of Creditors from such realization, sale, disposition or liquidation.

(c) Collateral Agent. With respect to its share of the Obligations, any Collateral Agent which is independently a Creditor shall have and may exercise the same rights and powers hereunder as, and shall be subject to the same obligations and liabilities as and to the extent set forth herein for, any other Creditor, all as if such Collateral Agent were not a Collateral Agent. The term “Creditors” or any similar term shall, unless the context clearly otherwise indicates, include any Collateral Agent in its individual capacity as a Creditor. Each Collateral Agent and its affiliates may lend money to, and generally engage in any kind of business with, the Grantors or any of their Affiliates as if such Collateral Agent were not acting as a Collateral Agent and without any duty to account therefor to any other Creditor.

SECTION 7.5 Obligations Unconditional. All rights, interests, agreements and obligations of the ABL Collateral Agent and the ABL Creditors and the Term Collateral Agent and the Term Creditors, respectively, hereunder (including the Lien priorities established hereby) shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any ABL Loan Document or any Term Loan Document;

45

(b) any change in the time, manner or place of payment of, or in any other terms of, all or any of the ABL Obligations or Term Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Loan Document or any Term Loan Document;

(c) any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Obligations or Term Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Borrower or any other Grantor, or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Borrower or any other Grantor in respect of any of the ABL Obligations, or of the Term Collateral Agent or any Term Creditor in respect of this Agreement.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of the ABL Loan Documents or the Term Loan Documents, as between the parties other than the Grantors the provisions of this Agreement shall govern and control.

SECTION 8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and (i) the ABL Creditors may, at any time and without notice to the Term Collateral Agent or any Term Creditor and (ii) the Term Creditors may, at any time and without notice to the ABL Collateral Agent or any ABL Creditor, in each case, continue to extend credit and other financial accommodations and lend monies to or for the benefit of the Borrower or any Grantor constituting ABL Obligations (in the case of the ABL Creditors) or Term Obligations (in the case of the Term Creditors) in reliance hereof. The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Documents) and the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Document), hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Without limiting the generality of the foregoing, this Agreement is intended to constitute and shall be deemed to constitute a “subordination agreement” within the meaning of Section 510(a) of the Bankruptcy Code and is intended to be and shall be interpreted to be enforceable to the maximum extent permitted pursuant to applicable nonbankruptcy law. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in

46

any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to the Borrower or any other Grantor shall include the Borrower or such Grantor as debtor and debtor-in-possession and any receiver or trustee for the Borrower or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect, (i) with respect to the ABL Collateral Agent, the ABL Creditors and the ABL Obligations, upon the Discharge of ABL Obligations (in a manner which is not in contravention of the terms of this Agreement), subject to the rights of the ABL Creditors and the Term Creditors under Section 6.5, and (ii) with respect to the Term Collateral Agent, the Term Creditors and the Term Obligations, the date of the Discharge of Term

Obligations, subject to the rights of the Term Creditors and the ABL Creditors under Section 6.5.

SECTION 8.3 Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the ABL Collateral Agent or the Term Collateral Agent shall be made unless the same shall be in writing signed on behalf of each party hereto; provided that

(a) the ABL Collateral Agent (at the direction of the Required ABL Creditors) may, without the written consent of any other Creditor, agree to modifications of this Agreement for the purpose of securing additional extensions of credit (including pursuant to the ABL Credit Agreement or any Refinancing or extension thereof) and adding new creditors as "ABL Creditors" and "Creditors" hereunder, so long as such extensions (and resulting additions) do not otherwise give rise to a violation of the express terms of the ABL Credit Agreement and, without the prior written consent of the Term Collateral Agent, Section 5.3(a),

(b) the Term Collateral Agent (at the direction of the Required Term Creditors) may, without the written consent of any other Creditor, agree to modifications of this Agreement for the purpose of securing additional extensions of credit (including pursuant to the Term Credit Agreement or any Refinancing or extension thereof) and adding new creditors as "Term Creditors" and "Creditors" hereunder, so long as such extensions (and resulting additions) do not otherwise give rise to a violation of the express terms of the Term Credit Agreement and, without the prior written consent of the ABL Collateral Agent, Section 5.3(b),

(c) additional Grantors may be added as parties hereto in accordance with the provisions of Section 8.18 of this Agreement.

Each waiver of the terms of this Agreement, if any, shall be a waiver only with respect to the specific instance involved and shall not impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, no Grantor shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights, interests, liabilities or privileges are directly affected or the provisions of any of the Documents are modified by the effect of any such amendment, modification or waiver. One of the Collateral Agents shall provide the Borrower with written notice of each amendment, modification and waiver, with a true and correct copy thereof.

47

SECTION 8.4 Information Concerning Financial Condition of the Grantors and their Subsidiaries. The ABL Collateral Agent and the ABL Creditors and the Term Collateral Agent and the Term Creditors, shall each be responsible for keeping themselves informed of (a) the financial condition of each Grantor and their respective Subsidiaries and all endorsers and/or guarantors of the ABL Obligations or the Term Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Obligations or the Term Obligations. Except as otherwise set forth herein, none of the Collateral Agents nor any Creditor shall have any duty to advise any of the other Collateral Agents, or any other Creditor, of information known to it or them regarding such condition or any such circumstances or otherwise. With respect to the ABL Priority Collateral, in the event the ABL Collateral Agent or any of the ABL Creditors, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Term Collateral Agent or any Term Creditor, it or they shall be under no obligation (w) to make, and the ABL Collateral Agent and the ABL Creditors shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential. With respect to the Term Priority Collateral, in the event the Term Collateral Agent or any of the Term Creditors, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the ABL Collateral Agent or any ABL Creditor, it or they shall be under no obligation (w) to make, and the Term Collateral Agent and the Term Creditors shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

SECTION 8.5 Subrogation. Subject to the Discharge of ABL Obligations, with respect to the value of any payments or distributions in cash, property or other assets that any of the Term Creditors or the Term Collateral Agent pay over to the ABL Collateral Agent or ABL Creditors under the terms of this Agreement, the respective paying Creditors shall be subrogated to the rights of the payee Creditors; provided that, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), hereby agree not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of ABL Obligations has occurred. The Borrower acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by any of the Term Collateral Agent or the Term Creditors and paid over to the ABL Collateral Agent or the ABL Creditors pursuant to, and applied in accordance with this Agreement, shall not relieve or reduce any of the Obligations owed by the Borrower under the Term Loan Documents.

(b) Subject to the Discharge of Term Obligations, with respect to the value of any payments or distributions in cash, property or other assets that any of the ABL Collateral Agent or the ABL Creditors pay over to the Term Collateral Agent or Term Creditors under the

48

terms of this Agreement, the respective paying Creditors shall be subrogated to the rights of the payee Creditors; provided that, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Credit Documents), and the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Credit Documents), hereby agree not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until, the Discharge of Term Obligations has occurred. The Borrower acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by the ABL Collateral Agent or the ABL Creditors and paid over to the Term Collateral Agent or the Term Creditors pursuant to, and applied in accordance with this Agreement, shall not relieve or reduce any of the Obligations owed by the Borrower under the ABL Loan Documents.

SECTION 8.6 Reserved.

SECTION 8.7 SUBMISSION TO JURISDICTION; WAIVERS. (a) THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(b) THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH EACH MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN SECTION 8.7(a). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT,

TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.7.

SECTION 8.8 Notices. All notices to the ABL Creditors or the Term Creditors permitted or required under this Agreement may be sent, respectively, to the ABL Collateral Agent or the Term Collateral Agent. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail or four Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

SECTION 8.9 Further Assurances. Each of (i) the ABL Collateral Agent, on behalf of itself and the ABL Creditors, (ii) the Term Collateral Agent, on behalf of itself and the Term Creditors and (iii) the Borrower, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any of the ABL Collateral Agent and/or the Term Collateral Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement. Each ABL Creditor, by its acceptance of the benefits of the ABL Loan Documents, agrees to be bound by the agreements herein made by it and the ABL Collateral Agent, on its behalf. Each Term Creditor, by its acceptance of the benefits of the Term Loan Documents, agrees to be bound by the agreements herein made by it and the Term Collateral Agent, on its behalf.

SECTION 8.10 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK INCLUDING GENERAL OBLIGATIONS LAW 5-1401.

SECTION 8.11 Binding on Successors and Assigns. This Agreement shall be binding upon the ABL Collateral Agent, the ABL Creditors, the Term Collateral Agent, the Term Creditors and their respective successors and assigns, including without limitation any successor or assign to all or a portion of the duties of any Collateral Agent (or any sub-agent or sub-collateral agent appointed by it).

SECTION 8.12 Specific Performance. Each of the ABL Collateral Agent and the Term Collateral Agent may demand specific performance of this Agreement. Each of the ABL Collateral Agent, on behalf of itself and the ABL Creditors and the Term Collateral Agent, on behalf of itself and the Term Creditors, hereby irrevocably waives any defense based on the

adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the ABL Collateral Agent or the Term Collateral Agent, as the case may be.

SECTION 8.13 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

SECTION 8.14 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

SECTION 8.15 Authorization. By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement. Each ABL Creditor, by its acceptance of the benefits of the ABL Loan Documents and each Term Creditor, by its acceptance of the benefits of the Term Loan Documents, agrees to be bound by the agreements made herein.

SECTION 8.16 No Third Party Beneficiaries; Effect of Agreement. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the ABL Creditors and the Term Creditors. No other Person shall have or be entitled to assert rights or benefits hereunder. Nothing in this Agreement shall impair, as between the Borrower and the ABL Collateral Agent and the ABL Creditors or the Borrower and the Term Collateral Agent and the Term Creditors, the obligations of the Borrower to pay principal, interest, fees and other amounts as provided in the ABL Loan Documents and the Term Loan Documents, respectively.

SECTION 8.17 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the ABL Creditors and the ABL Collateral Agent and the Term Creditors and the Term Collateral Agent. None of the Borrower, any other Grantor or any other creditor thereof shall have any rights hereunder. Nothing in this Agreement is intended to or shall impair the obligations of the Borrower or any other Grantor, which are absolute and unconditional, to pay the ABL Obligations and the Term Obligations as and when the same shall become due and payable in accordance with their terms.

SECTION 8.18 Grantors; Additional Grantors. It is understood and agreed that Holdings, the Borrower and each Subsidiary Guarantor on the date of this Agreement shall constitute the original Grantors party hereto. The original Grantors hereby covenant and agree to cause each Subsidiary of the Borrower which becomes a Subsidiary Guarantor after the date hereof to contemporaneously become a party hereto (as a Grantor) by executing and delivering a counterpart hereof to the ABL Collateral Agent and the Term Collateral Agent or by executing and delivering an assumption agreement in form and substance reasonably satisfactory to the

ABL Collateral Agent and the Term Collateral Agent. The parties hereto further agree that, notwithstanding any failure to take the actions required by the immediately preceding sentence, each Person which becomes a Subsidiary Guarantor at any time (and any security granted by any such Person) shall be subject to the provisions hereof as fully as if same constituted a Grantor party hereto and had complied with the requirements of the immediately preceding sentence.

IN WITNESS WHEREOF, the parties hereto have executed this Intercreditor Agreement as of the date first written above.

CREDIT SUISSE CAYMAN ISLANDS BRANCH in its capacity as ABL
Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[Signature Page to Intercreditor Agreement]

Notice Address

Eleven Madison Avenue, OMA-2
New York, NY 10010
Attention: Loan Services Manager
Telecopy: 212-538-3380
Telephone: 212-325-8304

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 S. Grand Ave, Suite 3400
Attention: David Kitchen
Telecopy: (213) 687-5600
Telephone: (213) 687-5000
Email: dkitchen@skadden.com

[Signature Page to Intercreditor Agreement]

JPMORGAN CHASE BANK, N.A., in its capacity as ABL Collateral Agent

By: _____
Name:
Title:

[Signature Page to Intercreditor Agreement]

Notice Address

Michael A. Hintz
Account Executive – ABL
111 East Wisconsin Ave., Floor 15
Milwaukee, WI 53202-4815

Telecopy: 414-977-6652
Telephone: 414-977-6666

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Suite 2100
Chicago, IL 60606
Attn: Seth E. Jacobson

Telecopy: 312-407-0700
Telephone: 312-407-0411

[Signature Page to Intercreditor Agreement]

CREDIT SUISSE, CAYMAN ISLANDS BRANCH, in its capacities as Term Administrative Agent and Term Collateral Agent

By: _____
Name
Title:

By: _____
Name
Title:

[Signature Page to Intercreditor Agreement]

Notice Address

Eleven Madison Avenue, OMA-2
New York, NY 10010
Attention: Loan Services Manager
Telecopy: 212-538-3380
Telephone: 212-325-8304

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 S. Grand Ave, Suite 3400
Attention: David Kitchen
Telecopy: (213) 687-5600
Telephone: (213) 687-5000
Email: dkitchen@skadden.com

[Signature Page to Intercreditor Agreement]

Notice Address:

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

DOUGLAS DYNAMICS HOLDINGS, INC.

By: _____
Name
Title:

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

[Signature Page to Intercreditor Agreement]

Notice Address:

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

DOUGLAS DYNAMICS, L.L.C.

By: _____
Name
Title:

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

[Signature Page to Intercreditor Agreement]

Notice Address:

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

DOUGLAS DYNAMICS FINANCE COMPANY

By: _____
Name
Title:

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

[Signature Page to Intercreditor Agreement]

Notice Address:

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

FISHER, LLC

By: _____
Name
Title:

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

[Signature Page to Intercreditor Agreement]

EXHIBIT M

FIXED CHARGE COVERAGE COMPLIANCE CERTIFICATE

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.

M-1

(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.

M-2

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

M-3

**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 1 share is designated Series B Preferred Stock; 1 share of Series B Preferred Stock issued and outstanding 1 share is designated Series C Preferred Stock; 1 share of Series C Preferred Stock 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). Douglas Dynamics Holdings, LLC (100%) 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	
Payroll Clearing- TN		Douglas Dynamics, L.L.C.	

Schedule 6.1
(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.

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

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:

3

- (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

4

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

Amendment No. 1

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

Amendment No. 1

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

TABLE OF CONTENTS

	Page
SECTION 1. DEFINITIONS AND INTERPRETATION	1
1.1 Definitions	1
1.2 Accounting Terms	37
1.3 Interpretation, etc.	38
SECTION 2. LOANS AND LETTERS OF CREDIT	38
2.1 Revolving Loans	38
2.2 Swing Line Loans	40
2.3 Issuance of Letters of Credit and Purchase of Participations Therein	43
2.4 Pro Rata Shares; Availability of Funds	47
2.5 Use of Proceeds	47
2.6 Evidence of Debt; Register; Lenders' Books and Records; Notes	48
2.7 Interest on Loans	49
2.8 Conversion/Continuation	51
2.9 Default Interest	51
2.10 Fees	52
2.11 Determination of Borrowing Base	53
2.12 Voluntary Prepayments/Commitment Reductions	59
2.13 Mandatory Prepayments	60
2.14 Application of Prepayments/Reductions	61
2.15 General Provisions Regarding Payments	62
2.16 Ratable Sharing	63
2.17 Making or Maintaining Eurodollar Rate Loans	64
2.18 Increased Costs; Capital Adequacy	66
2.19 Taxes; Withholding, etc.	67
2.20 Obligation to Mitigate	69
2.21 Defaulting Lenders	70
2.22 Removal or Replacement of a Lender	70
SECTION 3. CONDITIONS PRECEDENT	72
3.1 Closing Date	72
3.2 Conditions to Each Credit Extension	75
SECTION 4. REPRESENTATIONS AND WARRANTIES	76
4.1 Organization; Requisite Power and Authority; Qualification	76
4.2 Capital Stock and Ownership	76
4.3 Due Authorization	76
4.4 No Conflict	76
4.5 Governmental Consents	77
4.6 Binding Obligation	77
4.7 Financial Condition	77
4.8 Projections	78
4.9 No Material Adverse Change	78
4.10 No Restricted Payments	78
4.11 Litigation; Adverse Facts	78
4.12 Payment of Taxes	78
4.13 Properties	79
4.14 Environmental Matters	80
4.15 No Defaults	80
4.16 Governmental Regulation	80
4.17 Margin Regulations	81
4.18 Employee Matters	81
4.19 Employee Benefit Plans	81
4.20 Certain Fees	82
4.21 Solvency	82
4.22 Collateral	82
4.23 Disclosure	83
4.24 Deposit Accounts	83
SECTION 5. AFFIRMATIVE COVENANTS	83
5.1 Financial Statements and Other Reports	84
5.2 Existence	89
5.3 Payment of Taxes and Claims	89
5.4 Maintenance of Properties	90
5.5 Insurance	90
5.6 Inspections; Appraisals; and Inventories	90
5.7 Lenders Meetings	91
5.8 Compliance with Laws	92
5.9 Environmental	92
5.10 Subsidiaries	93
5.11 Additional Real Estate Assets	94

5.12	[Reserved]	94
5.13	Further Assurances	95
5.14	ERISA	95
5.15	Cash Management	95
SECTION 6.	NEGATIVE COVENANTS	96
6.1	Indebtedness	96
6.2	Liens	99
6.3	Sales and Leasebacks	101
6.4	No Further Negative Pledges	101
6.5	Restricted Payments	102
6.6	Restrictions on Subsidiary Distributions	104
6.7	Investments	104
6.8	Financial Covenants	106
6.9	Fundamental Changes; Asset Dispositions; Acquisitions	107
6.10	Disposal of Subsidiary Interests	109
6.11	Fiscal Year	109
6.12	Transactions with Shareholders and Affiliates	109
6.13	Conduct of Business	109
6.14	Permitted Activities of Holdings	109
6.15	Amendments or Waivers of Certain Agreements	110
6.16	Limitation on Payments Relating to Other Debt	111
SECTION 7.	GUARANTY	111

7.1	Guaranty of the Obligations	111
7.2	Contribution by Guarantors	111
7.3	Payment by Guarantors	112
7.4	Liability of Guarantors Absolute	113
7.5	Waivers by Guarantors	115
7.6	Guarantors' Rights of Subrogation, Contribution, etc.	115
7.7	Subordination of Other Obligations	116
7.8	Continuing Guaranty	116
7.9	Authority of Guarantors or Company	116
7.10	Financial Condition of Company	116
7.11	Bankruptcy, etc.	117
7.12	Discharge of Guaranty Upon Sale of Guarantor	117
SECTION 8.	EVENTS OF DEFAULT; LIQUIDITY EVENTS; CURE RIGHTS	118
8.1	Events of Default	118
8.2	Liquidity Event; Sponsor's Right to Cure	121
8.3	Financial Performance Covenant; Sponsors Right to Cure	122
SECTION 9.	AGENTS	123
9.1	Appointment of Agents	123
9.2	Powers and Duties	123
9.3	General Immunity	124
9.4	Agents Entitled to Act as Lender	125
9.5	Lenders' Representations, Warranties and Acknowledgment	125
9.6	Right to Indemnity	125
9.7	Successor Administrative Agent and Swing Line Lender	126
9.8	Collateral Documents and Guaranty	127
9.9	Overadvances	127
SECTION 10.	MISCELLANEOUS	128
10.1	Notices	128
10.2	Expenses	130
10.3	Indemnity	131
10.4	Set-Off	132
10.5	Amendments and Waivers	132
10.6	Successors and Assigns; Participations	135
10.7	Independence of Covenants	138
10.8	Survival of Representations, Warranties and Agreements	138
10.9	No Waiver; Remedies Cumulative	139
10.10	Marshalling; Payments Set Aside	139
10.11	Severability	139
10.12	Obligations Several; Independent Nature of Lenders' Rights	139
10.13	Headings	140
10.14	APPLICABLE LAW	140
10.15	CONSENT TO JURISDICTION	140
10.16	WAIVER OF JURY TRIAL	140
10.17	Confidentiality	141
10.18	Usury Savings Clause	142
10.19	Counterparts	142

10.20	Effectiveness	142
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APPENDICES:	A	Revolving Loan Commitments
	B	Notice Addresses
SCHEDULES:	4.1	Organization and Capital Structure
	4.2	Capital Stock and Ownership
	4.9	Absence of Certain Changes
	4.11	Litigation
	4.13	Real Estate Assets
	4.14	Environmental
	4.18	Employee Matters
	4.19	Employee Benefit Plans
	4.22	Certain Existing Liens
	4.24	Deposit Accounts
	6.1	Certain Indebtedness
	6.2	Certain Liens
	6.7	Certain Investments
	6.12	Certain Affiliate Transactions
EXHIBITS:	A-1	Funding Notice
	A-2	Conversion/Continuation Notice
	A-3	Issuance Notice
	B-1	Revolving Loan Note
	B-2	Swing Line Note
	C	Compliance Certificate
	D	Opinion of Counsel for Credit Parties
	E	Assignment Agreement
	F	Certificate Re Non-bank Status
	G	Solvency Certificate
	H	Counterpart Agreement
	I	Pledge and Security Agreement
	J	Mortgage
	K	Restricted Payment Certificate
	L	Borrowing Base Certificate
	M	Collateral Access Agreement
	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

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),

4

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.

5

“**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

(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

9

with the financial covenant set forth in Section 6.8(a), and not for any other purpose, the Financial Performance Covenant Cure Amount minus (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,

10

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 Debt of 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.

11

“**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.

12

“**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.

13

“**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).

14

“**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

15

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 do not at any time exceed \$1,000,000, held at a financial institution that is not, for United States 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.

18

“**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

19

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

20

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

21

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

22

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.

23

“**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.

24

“**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);

25

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- (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:

26

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.

27

“**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

28

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.

29

“**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

30

- (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, unindemnified or under-indemnified liabilities or potential liabilities with respect to any litigation, (viii) reserves for taxes, fees,

31

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

32

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.

33

“**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.

34

“**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).

35

“**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.

36

“**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.

40

- (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.

41

- (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

42

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 Line 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.

43

(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.

44

(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

45

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

46

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

47

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

51

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.

52

- (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;

56

- (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;

57

- (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;

58

- (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

59

(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.

60

(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

61

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.

62

(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

63

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

64

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.

65

(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

66

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)

67

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-8BEN or 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

68

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 to 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

72

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

73

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.

74

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

75

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

76

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

77

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

78

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

79

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.

80

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

81

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 recordings. 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

82

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,

83

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

84

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

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 the Borrowers' general ledger and financial statements and the reports delivered pursuant to clauses (1) and (2) above;

88

(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

89

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

90

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

91

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;

92

- (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.

93

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].

94

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 guaranteed 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

95

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

96

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;

97

(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

98

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),

99

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

100

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;

104

- (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

105

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

106

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

107

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.

108

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 or any increase 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 of 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.

112

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

113

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.

114

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 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

115

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

116

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 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

117

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

118

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

119

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 exist 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

120

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

121

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 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

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

125

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

126

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,

127

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

128

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

129

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

130

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

131

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.

132

(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:

133

- (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.

134

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,

135

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

136

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

137

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.

138

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.

139

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

140

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

<u>Lender</u>	<u>Revolving Loan Commitment</u>	<u>Pro Rata Share</u>
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	100.00000000 %

**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

2

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

3

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

4

Exhibit B

Amendment to Term Credit Agreement

See Exhibit 10.1 to Amendment No.7 to the Registration Statement on Form S-1 of Douglas Dynamics, Inc. (File No. 333-164590).

Exhibit C

Intercreditor Amendment

See attached.

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 amended in 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: _____

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:

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:

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:

A-3-1

EXHIBIT B-1

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.

B-1-1

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]

B-1-2

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:

B-1-3

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
------	----------------------------------	---------------------------------------	--	---------------------

B-1-4

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]

B-2-1

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: _____

B-2-2

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

B-2-3

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:

C-1

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.

I. 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) =			\$ [, ,]

- (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.

C-4

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).

C-5

EXHIBIT D

OPINION OF COUNSEL FOR CREDIT PARTIES

D-1

May 21, 2007

(212) 351-4000

C 22829-00009

(212) 351-4035

Credit Suisse,
Cayman Islands Branch, as
Administrative Agent for the
Lenders party to the Credit
Agreement referred to below

JPMorgan Chase Bank, N.A.,
as Collateral Agent for the
Lenders party to the Credit
Agreement referred to below

Each of the Lenders party to
the Credit Agreement referred to below

Re: Douglas Dynamics, L.L.C. — Credit and Guaranty Agreement dated as of May 21, 2007

Ladies and Gentlemen:

We have acted as counsel to Douglas Dynamics Holdings, Inc., a Delaware corporation ("Holdings"), Douglas Dynamics, L.L.C., a Delaware limited liability company (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 Company, the "Borrowers"; the Borrowers together with Holdings, are referred to herein as the "Obligors"), in connection with the Credit and Guaranty Agreement dated as of May 21, 2007 (the "Credit Agreement") among the Obligors, certain lenders party thereto (the "Lenders"), Credit Suisse Securities (USA) L.L.C., as Sole Bookrunner and Sole Lead Arranger, JPMorgan Chase Bank, N.A., as Collateral Agent (the "Collateral Agent"), and Credit Suisse, Cayman Islands Branch, as Administrative Agent (the "Administrative Agent" and, together with

the Collateral Agent and the Lenders, the "Lender Parties"). Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

In rendering this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction as being true copies, of the following documents and instruments:

- (i) the Credit Agreement, including all Exhibits and Schedules thereto;
- (ii) the Notes dated as of May 21, 2007 (the "Notes") made by the Borrowers payable to the order of the Lenders;
- (iii) the ABL Pledge and Security Agreement dated as of May 21, 2007 (the "Security Agreement") among the Obligors and the Collateral Agent;
- (iv) the Mortgage, Assignment of Leases, Rents and Profits and Security Agreement dated as of May 21, 2007 (the "Wisconsin Mortgage") made by the Company for the benefit of the Collateral Agent;
- (v) the Mortgage, Assignment of Leases, Rents and Profits and Security Agreement dated as of May 21, 2007 (the "Maine Mortgage") made by the Company for the benefit of the Collateral Agent;
- (vi) the Mortgage, Assignment of Leases, Rents and Profits and Security Agreement dated as of May 21, 2007 (the "Tennessee Mortgage" and, together with the Wisconsin Mortgage and the Maine Mortgage, the "Real Property Collateral Documents") made by the Company for the benefit of the Collateral Agent;
- (vii) the Deposit Account Control Agreement dated as of May 21, 2007 (the "Camden National Account Control Agreement") among Fisher, the Collateral Agent, Camden National Bank ("Camden"), and the other parties thereto;
- (viii) the Deposit Account Control Agreement dated as of May 21, 2007 (the "Chase Account Control Agreement"; and together with the Camden National Account Control Agreement, the "Deposit Account Control Agreements") among the Company, Holdings, DD Finance, the Collateral Agent, JP Morgan Chase Bank, N.A. (together with Camden, the "Deposit Account Banks"), and the other parties thereto;
- (ix) the financing statements on Form UCC-1 naming each Obligor as debtor to be filed with the Delaware Secretary of State (each a "Financing Statement"); and

2

- (x) the Intercreditor Agreement dated as of May 21, 2007 (the "Intercreditor Agreement") among the Collateral Agent, the Administrative Agent, the Obligors and the other parties thereto.

The Credit Agreement, the Notes, the Security Agreement and the Deposit Account Control Agreements are referred to herein collectively as the "Financing Documents." The Financing Documents, the Real Property Collateral Documents and the Intercreditor Agreement are referred to herein collectively as the "Transaction Documents." Each relevant Obligor's right, title and interest in the personal property collateral described in the Security Agreement is referred to herein collectively as the "UCC Collateral." The Uniform Commercial Code as enacted and in effect in the State of New York is referred to herein as the "NYUCC." The Uniform Commercial Code as enacted and in effect in the State of Delaware is referred to herein as the "Delaware UCC." The NYUCC and the Delaware UCC are each referred to herein as a "UCC." All references or sections or other subparts of the NYUCC include references to the equivalent provisions of the Delaware UCC, unless the context otherwise requires. All terms defined in the NYUCC are used herein as defined therein.

We have assumed without independent investigation that:

- a) The signatures on all documents examined by us are genuine, all individuals executing such documents had all requisite legal capacity and competency and (except in the case of the Obligors) were duly authorized, the documents submitted to us as originals are authentic and the documents submitted to us as certified or reproduction copies conform to the originals;
- b) Except as specifically addressed in our opinions in paragraphs 4(i)(B) and 5, the execution and delivery of the Transaction Documents by any Obligor and performance of its obligations thereunder do not violate any law, regulation, order, judgment or decree applicable to such Obligor;
- c) There are no agreements or understandings between or among any of the parties to the Transaction Documents or third parties that would expand, modify or otherwise affect the terms of the Transaction Documents or the respective rights or obligations of the parties thereunder or that would modify, release, terminate, subordinate or delay the attachment of the security interest and liens granted thereunder;
- d) To the extent that the ability of the Collateral Agent to enforce remedies under the Transaction Documents in respect of UCC Collateral comprised of inventory may be affected thereby, each Obligor is in compliance with the Fair Labor Standards

3

Act (see Citicorp Industrial Credit, Inc. v. Brock, 483 U.S. 27, 107 S.Ct. 2694 (1987)); and

- e) Each Obligor has, and will have at all times relevant to this opinion, rights in the UCC Collateral within the meaning of Section 9-203(b)(2) of the NYUCC.

In rendering this opinion, we have made such inquiries and examined, among other things, originals or copies, certified or otherwise identified to our satisfaction, of such records, agreements, certificates, instruments and other documents as we have considered necessary or appropriate for purposes of this opinion. As to certain factual

matters, we have relied to the extent we deemed appropriate and without independent investigation upon the representations and warranties of the Obligor in the Transaction Documents, certificates of officers of the Obligor, copies of which are attached hereto or separately delivered to the Administrative Agent (collectively, the “Officers’ Certificate”), or certificates obtained from public officials and others.

Based on the foregoing and in reliance thereon, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that:

1. Each Obligor is a validly existing corporation or limited liability company in good standing under the laws the State of Delaware and has all requisite corporate or limited liability company power to execute, deliver and perform its obligations under the Transaction Documents to which it is a party.
2. The execution and delivery by each Obligor of the Transaction Documents to which it is a party and the performance of its obligations under the Transaction Documents have been duly authorized by all necessary corporate or limited liability company action. Each Transaction Document has been duly executed and delivered by each Obligor party thereto.
3. Each Financing Document constitutes a legal, valid and binding obligation of each Obligor party thereto, enforceable against it in accordance with its terms.
4. The execution and delivery of the Transaction Documents by each Obligor party thereto, and the performance by each Obligor of the Transaction Documents to which it is a party, do not and will not
 - (i) violate (A) the charter or bylaws or similar governing documents of any such Obligor, or (B) based solely upon review of the orders, judgments or decrees identified to us in the Officers’ Certificate as constituting all orders, judgments or decrees binding on such Obligor, which are listed in part I of Schedule A hereto (each, a “Governmental Order”), any Governmental Order, or

4

(ii) based solely upon review of the documents identified to us in the Officers’ Certificate as constituting all material contracts of the Obligor, which are listed in part II of Schedule A hereto (each a “Material Contract”), (A) result in a material breach of or default under any Material Contract or (B) result in or require the creation or imposition of any lien or encumbrance upon any assets of such Obligor under any Material Contract, other than Permitted Liens.

5. The execution and delivery of the Transaction Documents by each Obligor party thereto and the performance by each Obligor of the Transaction Documents to which it is a party do not and will not violate, or require any filing with or approval of any governmental authority or regulatory body of the State of New York or the United States of America under, any law or regulation of the State of New York or the United States of America applicable to such Obligor that, in our experience, is generally applicable to transactions in the nature of those contemplated by the Transaction Documents, or the Delaware General Corporation Law or the Delaware Limited Liability Company Act, except for filings required for the perfection of Liens.
6. No Obligor is required to register as an “investment company” within the meaning of the Investment Company Act of 1940, as amended.
7. Each Obligor has granted a valid security interest in favor of the Collateral Agent, for the benefit of the secured parties in the UCC Collateral described in the Security Agreement, securing the payment and performance of the obligations purported to be secured thereby, to the extent a security interest can be created therein under Article 9 of the NYUCC. Upon the filing of the Financing Statements with the Delaware Secretary of State, such security interest in the UCC Collateral of each Obligor will be perfected to the extent security interests therein can be perfected by the filing of UCC-1 financing statements under Article 9 of the Delaware UCC.
8. Each Deposit Account Control Agreement is effective to perfect the security interests in the deposit accounts described therein (the “Deposit Accounts”) by control (as defined in Section 9-104(a)(2) of the NYUCC).
9. The execution and delivery by the Obligor of the Financing Documents and the performance of their obligations thereunder do not result in a breach or violation of Regulation U or X of the Board of Governors of the Federal Reserve System. Regulation T of the Board of Governors of the Federal Reserve System (“Regulation T”) does not apply to any Lender that is not a “creditor” (as defined in Regulation T). Regulation T defines “creditor” as any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (the “1934 Act”), any member of a national securities exchange, or any person associated

5

with a broker or dealer (as defined in section 3(a)(18) of the 1934 Act), except for business entities controlling or under common control with the creditor.

The foregoing opinions are subject to the following exceptions, qualifications and limitations:

- A. We render no opinion herein as to matters involving the laws of any jurisdiction other than (i) the State of New York, (ii) the United States of America, (iii) for purposes of paragraphs 1, 2, 4(i)(A) and 5 above, the Delaware General Corporation Law and the Delaware Limited Liability Company Act and (iv) for purposes of the last sentence of Paragraph 7, the Delaware UCC. We are not engaged in practice in the State of Delaware; however, we are generally familiar with the Delaware General Corporation Law, the Delaware Limited Liability Company Act and the Delaware UCC as currently in effect and have made such inquiries as we consider necessary to render the opinions contained in Paragraphs 1, 2, 4(i)(A), 5 and 7. We have further assumed without independent investigation that the operating agreement of each Obligor that is a Delaware limited liability company constitutes a legal, valid and binding obligation of each party thereto, enforceable against it in accordance with its terms and, to the extent our opinion in paragraph 2 is dependent on the interpretation of such agreement, it is based on the plain meaning of the provisions thereof in light of the Delaware Limited Liability Company Act. Without limitation, we do not express any opinion regarding any Delaware contract law. This opinion is limited to the effect of the present state of the laws of the State of New York, the United States of America and, to the limited extent set forth above, the laws of the State of Delaware and the facts as they presently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or the interpretations thereof or such facts. Except as expressly set forth in Paragraph 6 above, we express no opinion regarding the Securities Act of 1933, as amended, or any other federal or state securities laws or regulations.
- B. Our opinions set forth in paragraphs 3, 7 and 8 are subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors generally (including, without limitation, the effect of statutory or other laws regarding fraudulent transfers or preferential transfers) and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.
- C. We express no opinion regarding the effectiveness of (i) any waiver (whether or not stated as such) under the Transaction Documents of, or any consent thereunder relating to, unknown future rights or the rights of any party thereto existing, or duties owing to it, as a matter

6

of law; (ii) any waiver (whether or not stated as such) contained in the Transaction Documents of rights of any party, or duties owing to it, that is broadly or vaguely stated or does not describe the right or duty purportedly waived with reasonable specificity; (iii) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws or due to the negligence or willful misconduct of the indemnified party; (iv) any provision in any Financing Document waiving the right to object to venue in any court; (v) any agreement to submit to the jurisdiction of any Federal Court; (vi) any waiver of the right to jury trial; (vii) the effect on the enforceability of the Credit Agreement or other Transaction Documents against, or on the ability of a secured party to realize upon collateral security pledged or granted by, any Obligor or any other "surety" (which could include a co-borrower jointly liable for loans extended to another co-borrower, a hypothecator of property to secure obligations owed by another person or a common creditor that has subordinated obligations owing to it), of any facts or circumstances occurring after the date hereof that would constitute a defense to the obligation of a surety, unless such defense has been waived effectively by such Obligor or other surety; (viii) any provision purporting to establish evidentiary standards, (ix) any provision to the effect that every right or remedy is cumulative and may be exercised in addition to any other right or remedy or that the election of some particular remedy does not preclude recourse to one or more others; (x) any right of setoff to the extent asserted by a Person other than a Lender under the Financing Documents or (xi) the availability of damages or other remedies not specified in the Transaction Documents in respect of breach of any covenants (other than covenants relating to the payment of principal, interest, indemnities and expenses).

D. We express no opinion as to (i) any waivers or variations of rights of a debtor, including a guarantor, or duties of a secured party under provisions referred to in Section 9-602 of the NYUCC or (ii) any provision in the Security Agreement (A) that may be deemed to permit the Collateral Agent or any other person to sell or otherwise foreclose upon any UCC Collateral, or to apply the proceeds thereof, except in compliance with the NYUCC, applicable laws of the United States and other applicable state and local laws, or (B) that may be deemed to impose on the Collateral Agent standards for the care of the UCC Collateral in the possession or control of the Collateral Agent that would violate Section 9-207 or 9-208 of the NYUCC or to render such standards inapplicable.

E. Our opinion is subject to the effect of Section 552 of the United States Bankruptcy Code (limiting security interests in property acquired after the commencement of a case under the United States Bankruptcy Code). We call to your attention that under the provisions of the NYUCC certain third parties, such as buyers and lessees of goods in the ordinary course of business, licensees of general intangibles (including software) in the ordinary course of business, holders in due course of negotiable instruments, protected purchasers of securities or certain purchasers of security entitlements or financial assets, could acquire an

7

interest in the UCC Collateral free of the security interests of the Lender Parties, even though such security interests are perfected.

F. We express no opinion with respect to (i) the existence, non-existence or value of any UCC Collateral; (ii) any part of the UCC Collateral that is or may be such that a security interest therein is not covered by Article 9 of the NYUCC by virtue of Section 9-109; and (iii) the perfection of the security interests in any portion of the UCC Collateral, including deposit accounts, goods covered by a certificate of title (such as automobiles), patents, trademarks, copyrights, letter-of-credit rights and money, to the extent that filing of a financing statement is not or may not be sufficient to perfect a security interest therein (whether as a result of requirements for control or possession of such collateral, the applicability of preemptive United States laws or of certificate of title statutes or otherwise). We further express no opinion as to transfers of interests or rights in patents, trademarks or copyrights in connection with exercise of remedies against UCC Collateral under the Security Agreement.

G. We express no opinion with respect to (i) the adequacy or accuracy of the descriptions of the UCC Collateral contained in the Security Agreement, in any Financing Statement or in any document prepared in connection therewith, except for the legal adequacy of descriptions of UCC Collateral to the extent that such descriptions consist of the collateral types defined in the NYUCC (other than commercial tort claims); (ii) the enforceability or perfection of any security interest in the proceeds of any UCC Collateral other than pursuant to Section 9-315 of the Delaware UCC; (iii) any security interest in consumer goods or commercial tort claims; or (iv) perfection (or the law governing perfection) of any security interest in timber to be cut or as-extracted collateral (including oil, gas and other minerals).

H. We express no opinion with respect to the priority (and therefore no opinion as to the respective rights of any creditor, encumbrancer or other third party as against the rights of the Lender Parties) of any security interest in the UCC Collateral.

I. Perfection of the security interests generally will be terminated under the circumstances described in Sections 9-316, 9-507, 9-508 and 9-515 of the NYUCC, unless appropriate action is taken as provided therein. Without limitation, (i) all the financing statements filed must be continued at prescribed intervals by the timely filing of continuation statements and (ii) a new or amended financing statement may be required to be filed to retain any perfected security interest in the event any Obligor changes its name, identity or location (as determined under the NYUCC).

J. With reference to our opinions in paragraph 8 above, we have assumed without independent investigation that (i) each Deposit Account Bank is and at all times hereafter will be the "bank" (as defined in NYUCC Section 9-102(a)(8)) with which the

8

respective Deposit Accounts are maintained, (ii) each of the Deposit Accounts will at all relevant times constitute a "deposit account" within the meaning of Section 9-102(29) of the NYUCC that is established and maintained in accordance with the respective Deposit Account Control Agreement, (iii) the State of New York is and at all times hereafter will be the "bank's jurisdiction" of each Deposit Account Bank within the meaning of Section 9-304(b) of the NYUCC, and (iv) the Deposit Account Control Agreements will remain in full force and effect at all relevant times.

K. We express no opinion with respect to the ownership or quantity of funds from time to time credited to the Deposit Accounts. In this connection, we call to your attention that (i) a transferee of funds from a deposit account, absent collusion, takes the funds free and clear of any security interest, whether or not in violation of the Financing Documents or the Deposit Account Control Agreement and (ii) the Agent's security interest in the Deposit Accounts may be subject to rights of recoupment or set-off by, or a security interest in the Deposit Accounts in favor of, the respective Deposit Account Bank, except to the extent that those rights are validly waived.

L. Our opinions set forth in paragraphs 3 and 7 are subject to the following qualifications: (i) the Collateral Agent may not be entitled to vote the equity interests included in the Collateral (the "Pledged Interests") or to receive dividends or other distributions directly from the issuer thereof prior to becoming the record holder of the Pledged Interests; (ii) none of the Pledged Interests that are securities or any interest therein may be sold or further transferred by the Collateral Agent without registration under the Securities Act, except pursuant to an exemption from registration contained in such Act, and qualification or exemption from qualification under any applicable State securities or Blue Sky laws; and (iii) compliance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976 may be required prior to the exercise of any remedies under the Security Agreement with respect to the Pledged Interests.

M. For purposes of our opinion in paragraph 9, we have assumed without independent investigation that the representations and warranties of the Company set forth in the first and third sentences of Section 4.17 of the Credit Agreement are and will be true and correct at all relevant times. Our opinion in paragraph 9 is subject to (and we express no opinion in respect of) any requirement applicable to a Lender to obtain in good faith a Form FR U-1 or FR G-3 signed by the Obligors. Except as expressly set forth in paragraph 9, we express no opinion with respect to Regulation T of the Board of Governors of the Federal Reserve System.

N. In rendering our opinions expressed in paragraph 4 insofar as they require interpretation of Material Contracts, (i) we express no opinion with respect to the compliance by any Obligor with, or any financial calculations or data in respect of, financial covenants included in any Material Contract, and (ii) we have assumed that the limitation on the amount of

Indebtedness under the Credit Agreement in clause (b) of the definition of "Borrowing Base" in the Credit Agreement will be applied as provided therein.

This opinion is rendered as of the date hereof to the Lender Parties in connection with the Transaction Documents and may not be relied upon by any person other than the Lender Parties or by the Lender Parties in any other context. The Lender Parties may not furnish this opinion or copies hereof to any other person except (i) to bank examiners and other regulatory authorities should they so request in connection with their normal examinations, (ii) to the independent auditors and attorneys of the Lender Parties, (iii) pursuant to order or legal process of any court or governmental agency, (iv) in connection with any legal action to which any Lender Party is a party arising out of the transactions contemplated by the Transaction Documents, or (v) to any potential permitted assignee or participant in the interests of any Lender Party under the Transaction Documents for its information. Notwithstanding the foregoing, parties referred to in clause (v) of the immediately preceding sentence who become Lenders after the date hereof may rely on this opinion as if it were addressed to them (provided that such delivery shall not constitute a re-issue or reaffirmation of this opinion as of any date after the date hereof). This opinion may not be quoted without the prior written consent of the Firm.

Very truly yours,

10

SCHEDULE A — GOVERNMENTAL ORDERS AND MATERIAL CONTRACTS

I.

GOVERNMENTAL ORDERS

None.

II.

MATERIAL CONTRACTS

- Indenture dated as of December 16, 2004 among Douglas Dynamics, L.L.C. and Douglas Dynamics Finance Company, as issuers, Douglas Dynamics Holdings, Inc., as guarantor thereunder, and U.S. Bank National Association, as trustee.
- Tax Sharing Agreement dated as of December 10, 2004 among Douglas Dynamics Holdings, Inc., Douglas Dynamics, L.L.C. and Douglas Dynamics Finance Company.
- Amended and Restated Joint Management Services Agreement, dated April 12, 2004, among Douglas Dynamics Holdings, Inc., Douglas Dynamics, L.L.C., Aurora Management Partners LLC, and ACOF Management, L.P.
- Second Amended and Restated Securityholders Agreement dated as of June 30, 2004 among Douglas Dynamics Holdings, Inc. and certain of its stockholders, optionholders and warrant holders.
- Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and James L. Janik, as amended.
- Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and James R. Roethle, as amended.
- Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and Flemming H. Smitsdorff, as amended.
- Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and Raymond S. Littlefield, as amended.
- Deferred Stock Unit Agreement dated as of April 1, 2004 between Douglas Dynamics Holdings, Inc. and Ralph R. Gould, as amended.

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”)

(1) Select as applicable.

E-1

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]

[NAME OF ASSIGNEE]

Notices:

Notices:

 Attention:
 Telecopier:

 Attention:
 Telecopier:

with a copy to:

with a copy to:

 Attention:
 Telecopier:

 Attention:
 Telecopier:

Wire Instructions:

Wire Instructions:

(2) Set forth, to at least 9 decimal places, as a percentage of the Commitment/Loans of all Lenders thereunder.

E-2

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.

E-3

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 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

E-4

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.

E-5

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: _____

F-1

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

G-1

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

H-1

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]

H-2

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:

H-3

EXHIBIT I

PLEDGE AND SECURITY AGREEMENT

I-1

EXECUTION VERSION

ABL PLEDGE AND SECURITY AGREEMENT

dated as of May 21, 2007

among

DOUGLAS DYNAMICS, L.L.C.
DOUGLAS DYNAMICS FINANCE COMPANY
FISHER, LLC
DOUGLAS DYNAMICS HOLDINGS, INC.

EACH OF THE OTHER GRANTORS PARTY HERETO

and

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

TABLE OF CONTENTS

	<u>PAGE</u>
SECTION 1. DEFINITIONS	2
1.1 General Definitions	2
1.2 Definitions; Interpretation	9
SECTION 2. GRANT OF SECURITY	9
2.1 Grant of Security	9
2.2 Intercreditor Agreement	10
2.3 Certain Limited Exclusions	10
SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE	11
3.1 Security for Obligations	11
3.2 Continuing Liability Under Collateral	11
SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS	11

4.1	Generally	11
4.2	Equipment and Inventory	13
4.3	Receivables	15
4.4	Investment Related Property	16
4.5	Intellectual Property	21
4.6	Commercial Tort Claims	25
SECTION 5. FURTHER ASSURANCES; ADDITIONAL GRANTORS		25
5.1	Further Assurances	25
5.2	Additional Grantors	26
SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT		26
6.1	Power of Attorney	26
6.2	No Duty on the Part of Collateral Agent or Secured Parties	27
SECTION 7. REMEDIES		27
7.1	Generally	27
7.2	Application of Proceeds	29
7.3	Sales on Credit	29
7.4	Deposit Accounts	30
7.5	Investment Related Property	30
7.6	Intellectual Property	30
7.7	Cash Proceeds	32
SECTION 8. COLLATERAL AGENT		32
SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS		33
SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM		33
SECTION 11. MISCELLANEOUS		34

SCHEDULE 4.1 — GENERAL INFORMATION
SCHEDULE 4.2 — LOCATION OF EQUIPMENT AND INVENTORY
SCHEDULE 4.4 — INVESTMENT RELATED PROPERTY
SCHEDULE 4.5 — INTELLECTUAL PROPERTY — EXCEPTIONS
SCHEDULE 4.6 — COMMERCIAL TORT CLAIMS
EXHIBIT A — PLEDGE SUPPLEMENT
EXHIBIT B — UNCERTIFICATED SECURITIES CONTROL AGREEMENT

ABL PLEDGE AND SECURITY AGREEMENT, dated as of May 21, 2007 (this “**Agreement**”), between **EACH OF THE UNDERSIGNED**, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each, a “**Grantor**”), and **JPMORGAN CHASE BANK, N.A.** (“**JPMorgan Chase**”), as collateral agent for the Secured Parties (as herein defined) (in such capacity as collateral agent, the “**Collateral Agent**”).

RECITALS:

WHEREAS, reference is made to that certain Credit and Guaranty Agreement dated as May 21, 2007(as amended, restated, supplemented, Refinanced or otherwise modified from time to time in accordance with its terms, the “**Credit Agreement**”), 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 hereof (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, as collateral agent for the Lenders (in such capacity, the “**Collateral Agent**”);

WHEREAS, pursuant to the Credit Agreement, the lenders thereunder have extended or will extend certain Loans the Borrowers, which Obligations are to be guaranteed by Holdings and future Domesite Subsidiaries of the Company (such parties, together with Company, each a “**Credit Party**,” and collectively, the “**Credit Parties**”) and, in connection therewith, each Grantor has agreed to secure such Grantor’s obligations under the Credit Documents, Banking Services Agreements and the Hedge Agreements with a First Priority security interest in the ABL Priority Collateral and a Second Priority security interest in the Term Priority Collateral;

WHEREAS, subject to the terms and conditions of the Credit Agreement, certain Grantors may enter into one or more Hedge Agreements with one or more Lender Counterparties;

WHEREAS, the Company has also entered into the Term Credit Agreement, whereby the lenders thereunder have extended or will extend certain loans to the Company, to be guaranteed by Holdings and the Subsidiary Guarantors and in connection therewith, each of the Company, Holdings and the Subsidiary Guarantors thereunder have agreed to secure such party’s obligations thereunder with a First Priority Security Interest in the Term Priority Collateral and a Second Priority security interest in the ABL Priority Collateral, each in favor of the Term Collateral Agent;

WHEREAS, concurrently herewith, the Collateral Agent hereunder and the Term Collateral Agent have entered into an Intercreditor Agreement which provides for,

inter alia, the relative priorities of the security interests granted herein and in the Term Security Agreement;

WHEREAS, in consideration of the extensions of credit and other accommodations of Lenders and Lender Counterparties as set forth in the Credit Agreement, the Hedge Agreements and the Banking Services Agreements, respectively, each Grantor has agreed to secure such Grantor's obligations under the Credit Documents, the Hedge Agreements and the Banking Services Agreements as set forth herein; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and the Collateral Agent agree as follows:

SECTION 1. DEFINITIONS.

General Definitions. In this Agreement, the following terms shall have the following meanings:

"ABL Hedging Obligations" shall have the meaning assigned to such term in the Intercreditor Agreement.

"ABL Banking Services Obligations" shall have the meaning assigned to such term in the Intercreditor Agreement.

"Account Debtor" shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto.

"Accounts" shall mean all "accounts" as defined in Article 9 of the UCC.

"Agent" shall have the meaning assigned to such term in the Credit Agreement.

"Agreement" shall have the meaning set forth in the preamble.

"Additional Grantors" shall have the meaning set forth in Section 5.3.

"Assigned Agreements" shall mean, with respect to any Grantor, all agreements and contracts to which such Grantor is a party as of the date hereof, or to which such Grantor becomes a party after the date hereof.

"Banking Services Agreement" shall have the meaning assigned to such term in the Credit Agreement.

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

"Cash Proceeds" shall have the meaning assigned in Section 7.7.

"Chattel Paper" shall mean all "chattel paper" as defined in Article 9 of the UCC, including, without limitation, "electronic chattel paper" or "tangible chattel paper", as each term is defined in Article 9 of the UCC.

"Collateral" shall have the meaning assigned in Section 2.1.

"Collateral Account" shall mean any account established by the Collateral Agent.

"Collateral Agent" shall have the meaning set forth in the preamble.

"Collateral Records" shall mean books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any

time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

"Collateral Support" shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

"Commercial Tort Claims" shall mean all "commercial tort claims" as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.6 (as such schedule may be amended or supplemented from time to time).

"Commodities Accounts" (i) shall mean all "commodity accounts" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4 under the heading "**Commodities Accounts**" (as such schedule may be amended or supplemented from time to time).

"Company" shall have the meaning set forth in the recitals hereto.

"Controlled Foreign Corporation" shall mean "controlled foreign corporation" as defined in the Tax Code.

"Copyright Licenses" shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.5 (B) (as such schedule may be amended or supplemented from time to time).

"Copyrights" shall mean all United States, and foreign copyrights (including Community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.5(A) (as such schedule may be amended or supplemented from time to time), (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, and (iv) all rights to sue for past, present and future infringements thereof.

"Credit Agreement" shall have the meaning set forth in the recitals hereto.

"Credit Documents" shall have the meaning assigned to such term in the Credit Agreement.

"Deposit Accounts" (i) shall mean all "deposit accounts" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4 under the heading "**Deposit Accounts**" (as such schedule may be amended or supplemented from time to time).

“**Documents**” shall mean all “documents” as defined in Article 9 of the UCC.

“**Equipment**” shall mean: (i) all “equipment” as defined in Article 9 of the UCC, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC) and (iii) all accessions or additions thereto,

all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

“**Event of Default**” shall have the meaning assigned to such term in the Credit Agreement.

“**First Priority**” shall have the meaning assigned to such term in the Credit Agreement.

“**General Intangibles**” (i) shall mean all “general intangibles” as defined in Article 9 of the UCC, including “payment intangibles” also as defined in Article 9 of the UCC and (ii) shall include, without limitation, all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations, all Assigned Agreements and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

“**Goods**” (i) shall mean all “goods” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

“**Grantors**” shall have the meaning set forth in the preamble.

“**Hedge Agreement**” shall have the meaning assigned to such term in the Credit Agreement.

“**Holdings**” shall have the meaning set forth in the recitals hereto.

“**Instruments**” shall mean all “instruments” as defined in Article 9 of the UCC.

“**Insurance**” shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof) and (ii) any key man life insurance policies.

“**Intellectual Property**” shall mean, collectively, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses.

“**Intercreditor Agreement**” shall mean the Intercreditor Agreement dated the date hereof, among the Company, the Collateral Agent hereunder and the Term Collateral Agent, as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

“**Inventory**” shall mean (i) all “inventory” as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor’s business; all goods in which any Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by any Grantor, all computer programs embedded in any

goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

“**Investment Accounts**” shall mean the Collateral Account, Securities Accounts, Commodities Accounts and Deposit Accounts.

“**Investment Related Property**” shall mean: (i) all “investment property” (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit.

“**Lender**” shall have the meaning assigned to such term in the Credit Agreement.

“**Lender Counterparty**” shall have the meaning assigned to such term in the Credit Agreement.

“**Letter of Credit Right**” shall mean “letter-of-credit right” as defined in Article 9 of the UCC.

“**Lien**” shall have the meaning assigned to such term in the Credit Agreement.

“**Material Adverse Effect**” shall have the meaning assigned to such term in the Credit Agreement.

“**Money**” shall mean “money” as defined in the UCC.

“**Obligations**” shall have the meaning assigned to such term in the Credit Agreement.

“**Patent Licenses**” shall mean all agreements providing for the granting of any right in or to Patents (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.5(D) (as such schedule may be amended or supplemented from time to time).

“**Patents**” shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.5(C) hereto (as such schedule may be amended or supplemented from time to time), (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, and (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising therefrom.

“**Permitted Lien**” shall have the meaning given to such term in the Credit Agreement.

“**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.

“Pledge Supplement” shall mean any supplement to this agreement in substantially the form of Exhibit A.

“Pledged Debt” shall mean all Indebtedness owed to any Grantor, regardless of whether evidenced by instrument or promissory note, including, without limitation, all Indebtedness described on Schedule 4.4(A) under the heading “Pledged Debt” (as such schedule may be amended or supplemented from time to time), issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

“Pledged Equity Interests” shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

“Pledged LLC Interests” shall mean all interests in any limited liability company including, without limitation, all limited liability company interests listed on Schedule 4.4(A) under the heading “Pledged LLC Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such limited liability company interests and any interest of any Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

“Pledged Partnership Interests” shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 4.4(A) under the heading “Pledged Partnership Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such partnership interests and any interest of any Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

“Pledged Stock” shall mean all shares of capital stock owned by any Grantor, including, without limitation, all shares of capital stock described on Schedule 4.4(A) under the heading “Pledged Stock” (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of any Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

“Pledged Trust Interests” shall mean all interests in a Delaware business trust or other trust including, without limitation, all trust interests listed on Schedule 4.4(A) under the heading “Pledged Trust Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such trust interests and any interest of any

Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

“Proceeds” shall mean: (i) all “proceeds” as defined in Article 9 of the UCC, (ii) payments or distributions made with respect to any Investment Related Property and (iii) whatever is receivable or received when Collateral or proceeds are sold, leased, licensed, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

“Receivables” shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor’s rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

“Receivables Records” shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of any Grantor or any computer bureau or agent from time to time acting for any Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

“Record” shall have the meaning specified in Article 9 of the UCC.

“Refinance” means, in respect of any indebtedness, to refinance, extend, renew, defease, amend, modify, supplement, restructure, replace, refund or repay, or to issue other indebtedness, in exchange or replacement for, such indebtedness in whole or in part. **“Refinanced”** and **“Refinancing”** shall have correlative meanings.

“Secured Obligations” shall have the meaning assigned in Section 3.1.

“Secured Parties” shall mean the Collateral Agent, each Agent, the Issuing Bank, the Lenders and the Lender Counterparties and shall include, without limitation, (i) all former Lenders and Lender Counterparties to the extent that any Obligations owing to such Persons were incurred while such Persons were Lenders or Lender Counterparties and such Obligations have not been paid or satisfied in full, (ii) any person who is or was a Lender or an Affiliate of a Lender who entered into a Hedge Agreement and (iii) any person who is or was a Lender or an Affiliate of a Lender who entered into a Banking Services Agreement.

“Securities” shall mean 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 Accounts” (i) shall mean all “securities accounts” as defined in Article 8 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(A) under the heading “Securities Accounts” (as such schedule may be amended or supplemented from time to time).

“**Subsidiary Guarantor**” shall mean any Subsidiary of the Company that becomes a Guarantor in accordance with Section 5.10 of the Credit Agreement.

“**Supporting Obligation**” shall mean all “supporting obligations” as defined in Article 9 of the UCC.

“**Tax Code**” shall mean the United States Internal Revenue Code of 1986, as amended from time to time.

“**Term Collateral Agent**” means Credit Suisse, Cayman Islands Branch, as collateral agent under the Term Security Agreement, or any permitted successor, replacement or assign.

“**Term Credit Agreement**” shall have the meaning assigned to such term in the recitals.

“**Term Credit Documents**” shall mean the Term Credit Agreement and the other “Credit Documents” as defined in the Term Credit Agreement.

“**Term Security Agreement**” means that certain Term Pledge and Security Agreement dated as of the date hereof, among the Company, the other Grantors party hereto, and Credit Suisse, Cayman Islands Branch, as collateral agent thereunder.

“**Trademark Licenses**” shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.5(F) (as such schedule may be amended or supplemented from time to time).

“**Trademarks**” shall mean all United States, and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing including, but not limited to: (i) the registrations and applications referred to in Schedule 4.5 (E) (as such schedule may be amended or supplemented from time to time), (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, and (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill.

“**Trade Secret Licenses**” shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.5 (G) (as such schedule may be amended or supplemented from time to time).

“**Trade Secrets**” shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to the right to sue for past, present and future misappropriation or other violation of any Trade Secret.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

“**United States**” shall mean the United States of America.

Definitions; Interpretation. All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. References to “Sections,” “Exhibits” and “Schedules” shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. 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 nonlimiting 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. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. If any conflict or inconsistency exists between this Agreement, the Term Security Agreement and the Intercreditor Agreement with respect to the rights and obligations of the Collateral Agent hereunder and the Term Collateral Agent, the Intercreditor Agreement shall control. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

SECTION 2. GRANT OF SECURITY.

Grant of Security. Each Grantor hereby grants to the Collateral Agent for its benefit and for the benefit of the other Secured Parties, a security interest in and continuing lien on all of such Grantor’s right, title and interest in, to and under all personal property of such Grantor including, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which being hereinafter collectively referred to as the “**Collateral**”):

- (a) Accounts;
- (b) Chattel Paper;

-
- (c) Documents;
 - (d) General Intangibles;
 - (e) Goods;
 - (f) Instruments;
 - (g) Insurance;
 - (h) Intellectual Property;
 - (i) Investment Related Property;
 - (j) Letter of Credit Rights;
 - (k) Money;

- (l) Receivables and Receivable Records;
- (m) Commercial Tort Claims;
- (n) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing;

and

to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

Intercreditor Agreement. Notwithstanding anything to the contrary contained in this Agreement, the priorities with respect to all security interests granted to the Collateral Agent hereunder and under the other Credit Documents and to the Term Collateral Agent under the Term Security Agreement and the other Term Credit Documents shall be governed by the terms and provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

Certain Limited Exclusions. Notwithstanding anything herein to the contrary, in no event shall the security interest granted under Section 2.1 hereof attach to (a) any lease, license, contract, property rights or agreement to which any Grantor is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Grantor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity), provided however that, in the case of either (i) or (ii) above, such security interest shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such Lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above; or (b) any of the outstanding capital stock of a Controlled Foreign Corporation in excess

of 66% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote; provided that immediately upon the amendment of the Tax Code to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and the security interest granted by each Grantor shall attach to, such greater percentage of capital stock of each Controlled Foreign Corporation.

SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.

Security for Obligations. This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of 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 any successor provision thereof)), of all Obligations with respect to every Grantor (the “**Secured Obligations**”).

Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Party, (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

4.1 Generally.

- (a) **Representations and Warranties.** Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

- (i) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons other than Permitted Liens;

- (ii) it has indicated on Schedule 4.1(A) (as such schedule may be amended or supplemented from time to time): (A) the type of organization of such Grantor, (B) the jurisdiction of organization of such Grantor, (C) its organizational identification number, if any, and (D) the jurisdiction where the chief executive office or

its sole place of business is, and for the one-year period preceding the date hereof has been, located;

- (iii) the full legal name of such Grantor is as set forth on Schedule 4.1(A) and it has not done in the last five (5) years, and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B) (as such schedule may be amended or supplemented from time to time);

- (iv) except as provided on Schedule 4.1(C), it has not changed its name, jurisdiction of organization, chief executive office or sole place of business (or principal residence if such Grantor is a natural person) or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years;

- (v) upon the filing of all UCC financing statements naming each Grantor as “debtor” and the Collateral Agent as “secured party” and describing the Collateral in the filing offices set forth opposite such Grantor’s name on Schedule 4.1(D) hereof (as such schedule may be amended or supplemented from time to time), upon execution of a control agreement, in form and substance satisfactory to the Collateral Agent, with respect to any Deposit Account, upon consent of the issuer with respect to Letter of Credit Rights, and to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Patents, Trademarks and Copyrights in the applicable intellectual property registries, including but not limited to the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted to the Collateral Agent hereunder constitute valid and perfected First Priority or Second Priority Liens (in accordance with the Intercreditor Agreement (subject in the case of priority only to Permitted Liens and to the rights of the United States government (including any agency or department thereof) with respect to United States government Receivables) on all of the Collateral;

(vi) other than the financing statements filed in favor of the Collateral Agent, no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (A) financing statements for which proper termination statements have been delivered to the Collateral Agent for filing, (B) financing statements in favor of the Term Collateral Agent and (C) financing statements filed in connection with other Permitted Liens, and other than the filings in favor of the Collateral Agent and the Term Collateral Agent, 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;

(vii) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (A) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Agent hereunder or (B) the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (1) for the filings contemplated by clause (vii) above and (2) as may be required, in connection with the disposition of any

Investment Related Property, by laws generally affecting the offering and sale of Securities;

(viii) all information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects;

(ix) none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC); and

(x) it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except the Lien of the Term Collateral Agent and other Permitted Liens, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein;

(ii) it shall not change such Grantor's name, identity, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise), sole place of business (or principal residence if such Grantor is a natural person), chief executive office, type of organization or jurisdiction of organization unless it shall have (A) contemporaneously therewith notified the Collateral Agent in writing, by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, and (B) taken all actions necessary or advisable to maintain the continuous validity, perfection and the priority of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby;

(iii) upon such Grantor or any officer of such Grantor obtaining knowledge thereof, it shall promptly notify the Collateral Agent in writing of any event that has had or reasonably could be expected to materially and adversely affect the value of the Collateral or any significant portion thereof, the ability of any Grantor or the Collateral Agent to dispose of the Collateral or any portion thereof, or the rights and remedies of the Collateral Agent in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any significant portion thereof that if left unbonded or not removed would result in an Event of Default;

(iv) it shall not take or permit any action which could impair the Collateral Agent's rights in the Collateral in any material respect; and

(v) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except as permitted by, and in accordance with the Credit Agreement and the Term Credit Agreement.

Equipment and Inventory.

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on each Credit Date, that:

(i) all of the Equipment and Inventory (other than de minimis amounts of Equipment and Inventory not located in such locations in the ordinary course of business, Equipment and Inventory in transit between locations identified on Schedule 4.2 and Inventory in transit to Account Debtors) included in the Collateral is kept for the past four (4) years only at the locations specified in Schedule 4.2 (as such schedule may be amended or supplemented from time to time); and

(ii) subject to the provisions of Section 4.2(b)(iii), none of the Inventory or Equipment is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the UCC) therefor or otherwise in the possession of a bailee or a warehouseman.

(b) Covenants and Agreements. Each Grantor covenants and agrees that:

(i) it shall keep the Equipment, Inventory (other than de minimis amounts of Equipment and Inventory not located in such locations in the ordinary course of business, Equipment and Inventory in transit between locations identified on Schedule 4.2 and Inventory in transit to Account Debtors) and any Documents evidencing any Equipment and Inventory in the locations specified on Schedule 4.2 (as such schedule may be amended or supplemented from time to time) unless it shall have notified the Collateral Agent in writing, by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, contemporaneously with any change in locations, identifying such new locations and providing such other information in connection therewith as the Collateral Agent may reasonably request;

(ii) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Collateral Agent or the purchaser of such Equipment or Inventory;

(iii) if any Equipment or Inventory with a fair market value of greater than \$150,000 in the aggregate is in the possession or under the control of any third party, each Grantor shall join with the Collateral Agent in notifying the third party of the Collateral Agent's security interest and obtaining an acknowledgment from the third party that it is holding the Equipment and Inventory for the benefit of the Collateral Agent; provided, however, that following the occurrence and during the continuance of an Event of Default, each Grantor shall comply with this provision with respect to all Equipment and Inventory; and

(iv) with respect to any item of Equipment which is covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, upon the reasonable request of the Collateral Agent, (A) provide information with respect to any such Equipment in excess of \$40,000 individually or \$150,000 in the aggregate, (B) execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication

of the security interest created hereunder on such certificate of title, and (C) deliver to the Collateral Agent copies of all such applications or other documents filed during such calendar quarter and copies of all such certificates of title issued during such calendar quarter indicating the security interest created hereunder in the items of Equipment covered thereby.

Receivables.

(a) Covenants and Agreements: Each Grantor hereby covenants and agrees that:

(i) it shall keep and maintain at its own cost and expense satisfactory and complete records of the Receivables, including, but not limited to, the originals of all documentation with respect to all Receivables and records of all payments received and all credits granted on the Receivables, all merchandise returned and all other dealings therewith;

(ii) it shall perform in all material respects all of its obligations with respect to the Receivables;

(iii) it shall not amend, modify, terminate or waive any provision of any material Receivable in any manner which could reasonably be expected to materially and adversely affect the value of such Receivable as Collateral other than, prior to the occurrence and during the continuance of an Event of Default, in the ordinary course of business as generally conducted by such Grantor. Following an Event of Default, other than in the ordinary course of business as generally conducted by it and except as otherwise provided in subsection (iv) below, such Grantor shall not (A) grant any extension or renewal of the time of payment of any Receivable, (B) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (C) release, wholly or partially, any Person liable for the payment thereof, or (D) allow any credit or discount thereon; and

(iv) each Grantor shall continue to collect all amounts due or to become due to such Grantor under the Receivables and any Supporting Obligation and diligently exercise each material right it may have under any Receivable any Supporting Obligation or Collateral Support, in each case, at its own expense and consistent with such Grantor's reasonable business practice. Notwithstanding the foregoing, the Collateral Agent shall have the right at any time to require any Grantor to notify any Account Debtor of the Collateral Agent's security interest in the Receivables and any Supporting Obligation (and prior to the occurrence and continuance of an Event of Default, such notification may be on a "no name" basis) and, in addition, at any time following the occurrence and during the continuation of an Event of Default, the Collateral Agent may: (A) notify and direct, or require any Grantor to notify and direct, the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent; (B) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent; and (C) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the

same manner and to the same extent as such Grantor might have done. If the Collateral Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in a collateral account maintained under the sole dominion and control of the Collateral Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon. The Collateral Agent may, at any time that the Collateral Agent is permitted to conduct a commercial finance examination pursuant to Section 5.6(b) of the Credit Agreement, in the Collateral Agent's own name, in the name of a nominee of the Collateral Agent, or in the name of any Grantor communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of any such Grantor, parties to contracts with any such Grantor and obligors in respect of Instruments of any such Grantor to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, Chatel Paper, payment intangibles and/or other Receivables.

Investment Related Property.

4.4.1 Investment Related Property Generally

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) within 10 Business Days after the end of each calendar month, in the event it acquires rights in any Investment Related Property after the date hereof, it shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, reflecting such new Investment Related Property and all other Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Collateral Agent shall attach to all Investment Related Property immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a supplement to Schedule 4.4 as required hereby;

(ii) except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Investment Related Property, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property, then (A) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (B) such Grantor shall immediately take all steps, if any, necessary or advisable to ensure the validity, perfection, priority and, if applicable, control, except, with respect to control, as otherwise permitted under Sections 4.4.1(b) or 4.4.4(c)(i) below, of the Collateral Agent over such Investment Related Property (including, without limitation, delivery thereof to the Collateral Agent) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions,

securities or other property in trust for the benefit of the Collateral Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Collateral Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the issuer and consistent with the past practice of the issuer and all scheduled payments of interest; and

(iii) each Grantor consents to the grant by each other Grantor of a Security Interest in all Investment Related Property to the Collateral Agent.

(b) Delivery and Control. Each Grantor agrees that with respect to any Investment Related Property in which it currently has rights it shall comply with the provisions of this Section 4.4.1(b) on or before the Credit Date and with respect to any Investment Related Property hereafter acquired by such Grantor it shall comply with the provisions of this Section 4.4.1(b) promptly upon acquiring rights therein, in each case in form and substance satisfactory to the Collateral Agent. With

respect to any Investment Related Property that is represented by a certificate or that is an “instrument” (other than any Investment Related Property (i) credited to a Securities Account or (ii) which is represented by a certificate or “instrument” and does not exceed \$50,000 individually and \$200,000 in the aggregate) it shall cause such certificate or instrument to be delivered to the Collateral Agent, indorsed in blank by an “effective indorsement” (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a “certificated security” for purposes of the UCC; provided, however, that following the occurrence and during the continuance of an Event of Default, it shall cause all such certificates or instruments to be delivered to the Collateral Agent. For the avoidance of doubt, the Grantor shall comply with Section 4.4.1(a)(i) regardless of any exception set forth in this Section 4.4.1(b). With respect to any Investment Related Property that is an “uncertificated security” for purposes of the UCC (other than any “uncertificated securities” credited to a Securities Account), it shall cause the issuer of such uncertificated security to either (A) register the Collateral Agent as the registered owner thereof on the books and records of the issuer or (B) execute an agreement substantially in the form of Exhibit B hereto, pursuant to which such issuer agrees to comply with the Collateral Agent’s instructions with respect to such uncertificated security without further consent by such Grantor.

(c) Voting and Distributions.

(i) So long as no Event of Default shall have occurred and be continuing:

(A) except as otherwise provided under the covenants and agreements relating to Investment Related Property in this Agreement or elsewhere herein or in the Credit Agreement, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Credit Agreement; provided, no Grantor shall exercise or refrain from exercising any such right if the Collateral Agent shall have notified such Grantor that, in the Collateral Agent’s reasonable judgment, such action would materially and adversely affect the value of the Investment Related Property or any part thereof; it being understood, however, that neither the voting by such Grantor of any Pledged Stock

for, or such Grantor’s consent to, the election of directors (or similar governing body) at a regularly scheduled annual or other meeting of stockholders or with respect to incidental matters at any such meeting, nor such Grantor’s consent to or approval of any action otherwise permitted under this Agreement and the Credit Agreement, shall be deemed inconsistent with the terms of this Agreement or the Credit Agreement within the meaning of this Section 4.4(c)(i)(A); and

(B) the Collateral Agent shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies, and other instruments as such Grantor may from time to time reasonably request for the purpose of enabling such Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (A) above;

(ii) Upon the occurrence and during the continuation of an Event of Default and (except with regard to an Event of Default pursuant to Section 8.1(f) or 8.1(g) of the Credit Agreement) if the Collateral Agent has given written notice to the Grantor of its election to exercise its rights under this Agreement:

(A) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; and

(B) in order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (2) each Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth in Section 6.1.

4.4.2 Pledged Equity Interests

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) Schedule 4.4(A) (as such schedule may be amended or supplemented from time to time) sets forth under the headings “Pledged Stock,” “Pledged LLC Interests,” “Pledged Partnership Interests” and “Pledged Trust Interests,” respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule;

(ii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens, rights or claims of other Persons other than the lien of the Collateral Agent and the Term Collateral Agent and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(iii) without limiting the generality of Section 4.1(a)(vii), no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or desirable in connection with the creation, perfection or First Priority or Second Priority status, in accordance with the Intercreditor Agreement, of the security interest of the Collateral Agent in any Pledged Equity Interests or the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof;

(iv) none of the Pledged LLC Interests nor Pledged Partnership Interests are or represent interests in issuers that: (A) are registered as investment companies or (B) are dealt in or traded on securities exchanges or markets; and

(v) all of the Pledged LLC Interests and Pledged Partnership Interests are or represent interests in issuers that have opted to be treated as securities under the uniform commercial code of any jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) it shall comply in all material respects with all of its obligations under any partnership agreement or limited liability company agreement relating to Pledged Partnership Interests or Pledged LLC Interests and shall, except prior to the occurrence and during the continuance of an Event of Default, to the extent the relevant Grantor in the exercise of its reasonable business judgment otherwise elects, enforce all of its rights with respect to any Investment Related Property; and

(ii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property to the Collateral Agent and, without limiting the foregoing, consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Collateral Agent or its nominee following an Event of Default and to the substitution of the Collateral Agent or its nominee as a partner in any partnership or as a member in any limited

liability company with all the rights and powers related thereto.

4.4.3 Pledged Debt

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and each Credit Date, that Schedule 4.4 (as such schedule may be amended or supplemented from time to time in accordance with the terms set forth herein) sets forth under the heading "Pledged Debt" all of the Pledged Debt owned by any Grantor and, to the knowledge of such Grantor, all of such Pledged Debt has been duly authorized, authenticated or issued, and delivered and, to such Grantor's knowledge, is the legal, valid and binding obligation

of the issuers thereof and is not in default (other than with respect to issuers that are not Affiliates of any Grantor) and constitutes all of the issued and outstanding inter-company Indebtedness;

4.4.4 Investment Accounts

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and each Credit Date, that:

(i) Schedule 4.4 hereto (as such schedule may be amended or supplemented from time to time) sets forth under the headings "Securities Accounts" and "Commodities Accounts," respectively, all of the Securities Accounts and Commodities Accounts in which each Grantor has an interest. Each Grantor is the sole entitlement holder of each such Securities Account and Commodity Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Term Collateral Agent) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or securities or other property credited thereto;

(ii) Schedule 4.4 hereto (as such schedule may be amended or supplemented from time to time) sets forth under the headings "Deposit Accounts" all of the Deposit Accounts in which each Grantor has an interest. Each Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Term Collateral Agent) having either sole dominion and control (within the meaning of common law) or "control" (within the meanings of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(iii) Except as otherwise permitted in Section 4.4.4(c) or as otherwise consented to by the Collateral Agent, each Grantor has taken all actions necessary or desirable, including those specified in Section 4.4.4(c), to: (A) establish Collateral Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodities Accounts (each as defined in the UCC); (B) establish the Collateral Agent's "control" (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts; and (C) deliver all Instruments, except as otherwise permitted by Section 4.4.1(b), to the Collateral Agent.

(b) Covenant and Agreement. Each Grantor hereby covenants and agrees with the Collateral Agent and each other Secured Party that it shall not close or terminate any Investment Account unless a successor or replacement account has been established with the consent of the Collateral Agent with respect to which successor or replacement account a control agreement has been entered into by the appropriate Grantor, Collateral Agent and securities intermediary or depository institution at which such successor or replacement account is to be maintained in accordance with the provisions of Section 4.4.4(c) (and except as otherwise provided in Section 4.4.4(c)).

(c) Delivery and Control

(i) With respect to any Investment Related Property consisting of Securities Accounts or Securities Entitlements, except for Securities Accounts or

Securities Entitlements which do not exceed \$100,000 in the aggregate (such amount inclusive of any amounts held in any Deposit Accounts that are not subject to control agreements), it shall cause the securities intermediary maintaining such Securities Account or Securities Entitlement to enter into an agreement, in form and substance satisfactory to the Collateral Agent, pursuant to which it shall agree to comply with the Collateral Agent's "entitlement orders" without further consent by such Grantor. With respect to any Investment Related Property that is a "Deposit Account," except for Deposit Accounts which do not exceed \$100,000 in the aggregate (such amount inclusive of any amounts held in any Securities Accounts that are not subject to control agreements), it shall cause the depository institution maintaining such account to enter into an agreement, in form and substance satisfactory to the Collateral Agent, pursuant to which the Collateral Agent shall have both sole dominion and control over such Deposit Account (within the meaning of the common law) and "control" (within the meaning of Section 9-104 of the UCC) over such Deposit Account. Each Grantor shall have entered into such control agreement or agreements with respect to: (A) any Securities Accounts, Securities Entitlements or Deposit Accounts that exist on the Credit Date, as of or prior to the Credit Date, and (B) any Securities Accounts, Securities Entitlements or Deposit Accounts that are created or acquired after the Credit Date, as of or prior to the deposit or transfer of any such Securities Entitlements or funds, whether constituting moneys or investments, into such Securities Accounts or Deposit Accounts; except that with respect to any (A) Securities Accounts or Securities Entitlements that exist on the Closing Date, such Grantor shall have entered into such control agreements no later than sixty (60) days after such Closing Date and (B) Deposit Accounts that exist on the Closing Date, such Grantor shall have entered into such control agreements no later than the Closing Date; and

(ii) in addition to the foregoing, if any issuer of any Investment Related Property is located in a jurisdiction outside of the United States, each Grantor shall take such additional actions, including, without limitation, causing the issuer to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary or advisable, under the laws of such issuer's jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Agent. Upon the occurrence of an Event of Default, the Collateral Agent shall have the right, without notice to any Grantor, to transfer all or any portion of the Investment Related Property to its name or the name of its nominee or agent. In addition, upon the occurrence and during the continuation of an Event of Default, the Collateral Agent shall have the right at any time, without notice to any Grantor, to exchange any certificates or instruments representing any Investment Related Property for certificates or instruments of smaller or larger denominations.

4.5 Intellectual Property.

(a) Representations and Warranties. Except as disclosed in Schedule 4.5(H) (as such schedule may be amended or supplemented from time to time), each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) Schedule 4.5 (as such schedule may be amended or supplemented from time to time) sets forth a true and complete list of (A) all United States, state and foreign registrations of and applications for Patents, Trademarks (including all Internet domain names), and Copyrights owned by each Grantor and (B) all

Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses material to the business of such Grantor;

(ii) it is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed on Schedule 4.5 (as such schedule may be amended or supplemented from time to time), and owns or has the valid right to use all other material Intellectual Property used in or necessary to conduct its business, and all Intellectual Property Collateral is free and clear of all Liens, claims, encumbrances and licenses, except for Permitted Liens and the licenses set forth on Schedule 4.5(B), (D), (F) and (G) (as each may be amended or supplemented from time to time);

(iii) all Intellectual Property Collateral listed on Schedule 4.5 and all other Intellectual Property Collateral that is material to the conduct of such Grantor's business, is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and each Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every registration and application of Copyrights, Patents and Trademarks listed on Schedule 4.5 in full force and effect;

(iv) all registrations for Intellectual Property Collateral and all other Intellectual Property Collateral that is material to the Grantor's business is valid and enforceable (except as set forth in Section 4.5(b)(i)); no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of, such Grantor's right to register, or such Grantor's rights to own or use, any such material Intellectual Property Collateral and no such action or proceeding is pending or, to the best of such Grantor's knowledge, threatened, except for such actions or proceedings that could not reasonably be expected to have a Material Adverse Effect;

(v) all registrations and applications for Copyright Collateral, Patent Collateral and Trademark Collateral are standing in the name of each Grantor, and none of the Trademark Collateral, Patent Collateral, Copyright Collateral or Trade Secret Collateral has been licensed by any Grantor to any Affiliate or third party, except as disclosed in Schedule 4.5(B), (D), (F), or (G) (as each may be amended or supplemented from time to time) and pursuant to non-exclusive licenses entered into in the ordinary course of business;

(vi) each Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights that are, in each case, material to the business of such Grantor;

(vii) each Grantor maintains standards of quality in the manufacture, distribution, and sale of all products sold, and in the provision of all services rendered, under or in connection with all Trademark Collateral that is material to the business of such Grantor and has taken all action necessary to insure that all licensees of the Trademark Collateral owned by such Grantor maintains such standards of quality adequate at minimum to prevent any of the Trademark Collateral from becoming invalid or unenforceable;

(viii) the conduct of the business of Grantor as currently conducted 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; no claim is pending or threatened that the use of any Intellectual Property owned or used by Grantor (or any of its respective licensees) violates the rights of any third party, except for claims that could not reasonably be expected to have a Material Adverse Effect;

(ix) to the best of each Grantor's knowledge, no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by such Grantor, where such infringement or violation could reasonably be expected to have a Material Adverse Effect; and

(x) no settlements or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by any Grantor or to which any Grantor is bound that materially and adversely affects any Grantor's rights to own or use any Intellectual Property that is material to the business of such Grantor.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) it shall not do any act or omit to do any act whereby any of the Intellectual Property which is material to the business of any Grantor may lapse, or become abandoned, dedicated to the public or unenforceable, or which would adversely affect the validity, grant or enforceability of the security interest granted therein;

(ii) it shall not, with respect to any Trademarks which are material to the business of any Grantor, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and each Grantor shall use commercially reasonable efforts to insure that licensees of such Trademarks use such consistent standards of quality;

(iii) it shall not apply to register any Copyright in the United States Copyright Office without the prior written notice to the Collateral Agent, and the provision of details sufficient for the Collateral Agent to record its security interest in the United States Copyright Office;

(iv) it shall promptly notify the Collateral Agent if it knows or has reason to know that any item of the Intellectual Property that is material to the business of any Grantor may become (A) abandoned or dedicated to the public or placed in the public domain, (B) invalid or unenforceable, or (C) subject to any adverse determination or development (including the institution of proceedings) in any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court;

(v) it shall take all reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue all applications and maintain all registrations of each Trademark, Patent, and Copyright owned by any Grantor and

material to its business which is now or shall become included in the Intellectual Property Collateral;

(vi) in the event that any Intellectual Property owned by or exclusively licensed to any Grantor is infringed, misappropriated, or diluted by a third party, such Grantor shall promptly take all actions such Grantor determines is necessary or advisable in its reasonable business judgment to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(vii) it shall within ten (10) Business days after the end of each Fiscal Quarter report to the Collateral Agent (A) the filing of any

application to register any Intellectual Property Collateral with the United States Patent and Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by such Grantor or through any agent, employee, licensee, or designee thereof during such Fiscal Quarter), and (B) the registration of any Intellectual Property Collateral by any such office, in each case by executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto;

(viii) it shall, promptly upon the reasonable request of the Collateral Agent, execute and deliver to the Collateral Agent any document required to acknowledge, confirm, register, record, or perfect the Collateral Agent's interest in any and all parts of the Intellectual Property Collateral, whether now owned or hereafter acquired;

(ix) except with the prior written consent of the Collateral Agent or as permitted under the Credit Agreement or the Term Credit Agreement, each Grantor (i) shall not execute, and there will not be any filings with respect to a Lien on file in any public office, any financing statement or other document or instruments, except financing statements or other documents or instruments filed or to be filed in favor of the Collateral Agent or in connection with any other Permitted Lien and (ii) shall not sell, assign, transfer, grant any option, or create or suffer to exist any Lien upon or with respect to the Intellectual Property Collateral, except for the Lien created by and under this Agreement, the Term Security Agreement or the other Credit Documents;

(x) it shall hereafter use commercially reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could reasonably be expected to materially impair or prevent the creation of a security interest in, or the assignment of, such Grantor's rights and interests in any Intellectual Property acquired under such contracts, except for non-exclusive licenses entered into in the ordinary course of business which restrict only the assignment of such license;

(xi) it shall take all steps reasonably necessary to protect the secrecy of all Trade Secrets, including, without limitation, entering into confidentiality agreements with employees and labeling and restricting access to confidential information and documents; and

(xii) it shall use proper statutory notice in connection with its use of any of the Intellectual Property that is material to its business.

4.6 Commercial Tort Claims.

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that Schedule 4.6 (as such schedule may be amended or supplemented from time to time) sets forth all known Commercial Tort Claims of each Grantor in excess of \$250,000 individually or \$500,000 in the aggregate; and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any known Commercial Tort Claim in excess of \$250,000 individually or \$500,000 in the aggregate hereafter arising it shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

SECTION 5. FURTHER ASSURANCES; ADDITIONAL GRANTORS.

Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Collateral Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Intellectual Property with any intellectual property registry in which said Intellectual Property is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing;

(iii) at any reasonable time, upon request by the Collateral Agent, allow inspection of the Collateral by the Collateral Agent, or persons designated by the Collateral Agent; and

(iv) at the Collateral Agent's request, appear in and defend any action or proceeding that may affect such Grantor's title to or the Collateral Agent's security interest in all or any part of the Collateral.

(b) Each Grantor hereby authorizes the Collateral Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Collateral Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Collateral Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail.

(c) Each Grantor hereby authorizes the Collateral Agent to modify this Agreement after obtaining such Grantor's approval of or signature to such modification by amending Schedule 4.5 (as such schedule may be amended or supplemented from time to time) to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by any Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which any Grantor no longer has or claims any right, title or interest.

Additional Grantors. From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "Additional Grantor"), by executing a Pledge Supplement in the form attached hereto as Exhibit A and a Counterpart Agreement in accordance with the Credit Agreement. Upon delivery of any such Pledge Supplement to the Collateral Agent, notice of which is hereby waived by Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Collateral Agent not to cause any Subsidiary of Company to become an Additional Grantor

hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.

Power of Attorney. Each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument that the Collateral Agent may deem reasonably necessary or advisable to allow the Collateral Agent to undertake any action required to be undertaken by any Grantor hereunder and not so undertaken, and otherwise to accomplish the purposes of this Agreement, including, without limitation, the following:

- (a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by such Grantor or paid to the Collateral Agent pursuant to the Credit Agreement;

- (b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;
- (c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;
- (d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;
- (e) to prepare and file any UCC financing statements against such Grantor as debtor;
- (f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor;
- (g) upon the occurrence and during the continuance of any Event of Default, to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge Taxes and all penalties and interest related thereto or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand; and
- (h) upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at the Collateral Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that the Collateral Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

No Duty on the Part of Collateral Agent or Secured Parties The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 7. REMEDIES.

7.1 Generally.

- (a) If any Event of Default shall have occurred and be continuing, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Collateral Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:
 - (i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;
 - (ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;
 - (iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and
 - (iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

- (b) The Collateral Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent to the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Collateral Agent, as collateral agent for and representative of the Secured Parties, 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 sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of

the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising

by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantors shall be liable for the deficiency and the fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities or that relate to non-waivable provisions of applicable law. Nothing in this Section shall in any way alter the rights of the Collateral Agent hereunder.

(c) The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Collateral Agent shall have no obligation to marshal any of the Collateral.

Application of Proceeds. Except as provided in the Intercreditor Agreement, all proceeds received by the Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by the Collateral Agent against, the Secured Obligations in the following order of priority: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to the Collateral Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith, and all amounts for which the Collateral Agent is entitled to indemnification hereunder (in its capacity as the Collateral Agent and not as a Lender) and all advances made by the Collateral Agent hereunder for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by the Collateral Agent in connection with the exercise of any right or remedy hereunder or under the Credit Agreement, all in accordance with the terms hereof or thereof; second, to pay interest on and then principal of any portion of (x) the Revolving Loans that Administrative Agent may have advanced on behalf of any Lender for which Administrative Agent has not then been reimbursed by such Lender or Company and (y) the amount of drawings honored by Issuing Bank under a Letter of Credit for which Issuing Bank has not then been reimbursed by any Lender or Company; third, to the extent of any excess of such proceeds, to the payment of all other Secured Obligations for the ratable benefit of the Lenders and the Lender Counterparties; and fourth, to the extent of any excess of such proceeds, to the payment to or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

Sales on Credit. If Collateral Agent sells any of the Collateral on credit, the Secured Obligations will be credited only with payments actually made by purchaser and received by Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Collateral Agent may resell the Collateral and the Secured Obligations shall be credited with proceeds of the sale.

7.4 Deposit Accounts.

If any Event of Default shall have occurred and be continuing, the Collateral Agent may apply the balance from any Deposit Account or instruct the bank at which any Deposit Account is maintained to pay the balance of any Deposit Account to or for the benefit of the Collateral Agent.

7.5 Investment Related Property.

Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

7.6 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(i) the Collateral Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, in the Collateral Agent's sole discretion, to enforce any Intellectual Property Collateral, in which event such Grantor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify the Collateral Agent as provided in Section 10 hereof in connection with the exercise of its rights under this Section, and, to the extent that the Collateral Agent shall elect not to bring suit to enforce any Intellectual Property Collateral as provided in this Section, each Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of such Grantor's rights in the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any action, suit or

proceeding against any Person so infringing as shall be necessary to prevent such infringement or violation to the extent required under Section 4.5(b);

(ii) upon written demand from the Collateral Agent, each Grantor shall grant to the Collateral Agent any licenses, assignments or rights in any of such Grantor's right, title and interest in and to any Intellectual Property Collateral and shall execute and deliver to the Collateral Agent such documents as are necessary or appropriate for the Grantor or the Collateral Agent to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor prior to such Event of Default;

(iii) within five (5) Business Days after written notice from the Collateral Agent, each Grantor shall use reasonable best efforts to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor under or in connection with the Trademarks and Trademark Licenses; and

(iv) the Collateral Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property Collateral, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done; including

- (1) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to such Grantor in respect of the Intellectual Property Collateral or any portion thereof shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.7 hereof; and
- (2) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Collateral Agent of any rights, title and interests in and to the Intellectual Property Collateral shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Collateral Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by the Collateral Agent; provided, after giving effect to such reassignment, the Collateral Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Agent granted hereunder, shall continue to be in full force and effect; and provided further, the

rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Collateral Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 7 and at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, to the extent it has the right to do so, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located.

Cash Proceeds. In addition to the rights of the Collateral Agent specified in Section 4.3 with respect to payments of Receivables, upon the occurrence and during the continuation of an Event of Default and (except with regard to an Event of Default pursuant to Section 8.1(f) or 8.1(g) of the Credit Agreement) notice from the Collateral Agent of its intent to exercise its rights under this Section 7.7, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other non-cash items (collectively, "**Cash Proceeds**") shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, unless otherwise provided pursuant to Section 4.4(a)(ii), be turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required) and held by the Collateral Agent in the Collateral Account. Any Cash Proceeds received by the Collateral Agent (whether from a Grantor or otherwise): if an Event of Default shall have occurred and be continuing, may, in the sole discretion of the Collateral Agent, (A) be held by the Collateral Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter shall be applied by the Collateral Agent against the Secured Obligations in accordance with the terms hereof (except as otherwise provided in the Intercreditor Agreement).

SECTION 8. COLLATERAL AGENT.

The Collateral Agent has been appointed to act as Collateral Agent hereunder by Lenders and, by their acceptance of the benefits hereof, the other Secured Parties. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement, the Intercreditor Agreement and the Credit Agreement. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of Secured Parties in accordance with the terms of this Section and the Intercreditor Agreement. Collateral Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and the Grantors. Upon any such notice of resignation, Requisite Lenders shall have the right, upon five (5) Business Days' notice to the Collateral Agent, to appoint a successor Collateral 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 Collateral Agent gives notice of its resignation, then the resigning Collateral Agent may, on behalf of the Secured Parties, appoint a successor Collateral Agent. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor

Collateral Agent, that successor Collateral Agent shall be deemed the Collateral Agent under this Agreement. After any retiring Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Agreement and the Credit Agreement (including Section 9 thereof) shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder.

Grantors jointly and severally agree to indemnify the Collateral Agent and the other Secured Parties from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from the Collateral Agent's or Secured Party's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. The obligations of Grantors in this Section 8 shall survive the termination of this Agreement and the discharge of the Secured Obligations.

SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit (or the cash collateralization of such Letters of Credit in an amount and manner reasonably satisfactory to the Collateral Agent), be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Secured Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit (or the cash collateralization of such Letters of Credit in an amount and manner reasonably satisfactory to the Collateral Agent), the security interest granted hereby shall terminate hereunder and of record and all rights to the Collateral (other than such cash collateral) shall revert to Grantors. Upon any such termination the Collateral Agent shall, at Grantors' expense, execute and deliver to

Grantors such documents as Grantors shall reasonably request to evidence such termination. In addition, the Collateral Agent shall, at Grantors' expense, execute and deliver to Grantors any documents or instruments necessary to release any Lien in accordance with Section 9.8 of the Credit Agreement encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted under the Credit Agreement.

SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM.

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of

the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under Section 10.2 of the Credit Agreement.

SECTION 11. MISCELLANEOUS.

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 10.1 of the Credit Agreement. No failure or delay on the part of the Collateral Agent 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. All rights, powers and remedies existing under this Agreement and the other Credit Documents 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 Document. 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. In case any provision in or obligation under this 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. 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. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Collateral Agent given in accordance with the Credit Agreement, assign any right, duty or obligation hereunder. This Agreement, the Intercreditor Agreement and the other Credit Documents embody the entire agreement and understanding between Grantors and the Collateral Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. This Agreement may be executed in one or more 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.

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 ITS CONFLICTS OF LAW PRINCIPLES THEREOF.

[Signatures follow on next page]

IN WITNESS WHEREOF, each Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

DOUGLAS DYNAMICS HOLDINGS, INC.

By: _____
Name:
Title:

DOUGLAS DYNAMICS, L.L.C.

By: _____
Name:
Title:

DOUGLAS DYNAMICS FINANCE COMPANY

By: _____
Name:
Title:

FISHER, LLC,

By: _____
Name:
Title:

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

By: _____

Name: _____

Title: _____

SCHEDULE 4.1
TO PLEDGE AND SECURITY AGREEMENT

GENERAL INFORMATION

(A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person) and Organizational Identification Number of each Grantor:

Full Legal Name	Type of Organization	Jurisdiction of Organization	Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person)	Organization I.D.#
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

Full Legal Name	Trade Name or Fictitious Business Name
_____	_____
_____	_____

(C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business (or Principal Residence if Grantor is a Natural Person) and Corporate Structure within past five (5) years:

Name of Grantor	Date of Change	Description of Change
_____	_____	_____
_____	_____	_____

(D) Agreements pursuant to which any Grantor is found as debtor within past five (5) years:

Name of Grantor	Description of Agreement
_____	_____
_____	_____

(E) Financing Statements:

Name of Grantor	Filing Jurisdiction(s)
_____	_____
_____	_____

SCHEDULE 4.2
TO PLEDGE AND SECURITY AGREEMENT

Name of Grantor	Location of Equipment and Inventory
_____	_____
_____	_____

SCHEDULE 4.4
TO PLEDGE AND SECURITY AGREEMENT

INVESTMENT RELATED PROPERTY

(A) Pledged Stock:

Grantor	Stock Issuer	Class of Stock	Certificated (Y/N)	Stock Certificate No.	Par Value	No. of Pledged Stock	% of Outstanding Stock of the Stock Issuer
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Pledged LLC Interests:

Grantor	Limited Liability Company	Certificated (Y/N)	Certificate No. (if any)	No. of Pledged Units	% of Outstanding LLC Interests of the Limited Liability Company
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Pledged Partnership Interests:

Grantor	Partnership	Type of Partnership Interests (e.g., general or limited)	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Partnership Interests of the Partnership
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Pledged Trust Interests:

Grantor	Trust	Class of Trust Interests	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Trust Interests of the Trust
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Pledged Debt:

Grantor	Issuer	Original Principal Amount	Outstanding Principal Balance	Issue Date	Maturity Date
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Securities Account:

Grantor	Share of Securities Intermediary	Account Number	Account Name
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Commodities Accounts:

Grantor	Name of Commodities Intermediary	Account Number	Account Name
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Deposit Accounts:

Grantor	Name of Depository Bank	Account Number	Account Name
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(B)

Name of Grantor	Date of Acquisition	Description of Acquisition
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SCHEDULE 4.5
TO PLEDGE AND SECURITY AGREEMENT

Name of Grantor

INTELLECTUAL PROPERTY

- (A) Copyrights
- (B) Copyright Licenses
- (C) Patents
- (D) Patent Licenses
- (E) Trademarks
- (F) Trademark Licenses
- (G) Trade Secret Licenses
- (H) Intellectual Property Exceptions

SCHEDULE 4.6
TO PLEDGE AND SECURITY AGREEMENT

COMMERCIAL TORT CLAIMS

- Douglas Dynamics Holdings, Inc.
- Douglas Dynamics, L.L.C.
- Douglas Dynamics Finance Company
- Fisher, LLC

EXHIBIT A
TO PLEDGE AND SECURITY AGREEMENT

PLEDGE SUPPLEMENT

This **PLEDGE SUPPLEMENT**, dated [mm/dd/yy], is delivered by [NAME OF GRANTOR] a [NAME OF STATE OF ORGANIZATION] [Corporation] (the “Grantor”) pursuant to the ABL Pledge and Security Agreement, dated as of May 21, 2007 (as it may be from time to time amended, restated, modified or supplemented, the “Security Agreement”), 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 and Douglas Dynamics Finance Company, the other Grantors named therein, and JPMorgan Chase Bank, N.A., as the Collateral Agent. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Grantor hereby confirms the grant to the Collateral Agent set forth in the Security Agreement of, and does hereby grant to the Collateral Agent, a security interest in all of Grantor’s right, title and interest in and to all Collateral to secure the Secured Obligations, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located. Grantor represents and warrants that the attached Supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such Supplements to Schedules shall constitute part of the Schedules to the Security Agreement, and agrees to be bound by all of the provisions of the Security Agreement applicable to any “Grantor”.

IN WITNESS WHEREOF, Grantor has caused this Pledge Supplement to be duly executed and delivered by its duly authorized officer as of [mm/dd/yy].

[NAME OF GRANTOR]

By: _____
Name:
Title:

Additional Information:

(A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person) and Organizational Identification Number of each Grantor:

Full Legal Name	Type of Organization	Jurisdiction of Organization	Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person)	Organization I.D.#

(B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

Full Legal Name	Trade Name or Fictitious Business Name

(C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business (or Principal Residence if Grantor is a Natural Person) and Corporate Structure within past five (5) years:

Name of Grantor	Date of Change	Description of Change

(D) Agreements pursuant to which any Grantor is found as debtor within past five (5) years:

Name of Grantor	Description of Agreement

(E) Financing Statements:

2

Name of Grantor	Filing Jurisdiction(s)

3

SUPPLEMENT TO SCHEDULE 4.2
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

Name of Grantor	Location of Equipment and Inventory

4

SUPPLEMENT TO SCHEDULE 4.4
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

- (A)
- Pledged Stock:
- Pledged Partnership Interests:
- Pledged LLC Interests:
- Pledged Trust Interests:
- Pledged Debt:
- Securities Account:
- Commodities Accounts:

Deposit Accounts:

(B)

Name of Grantor	Date of Acquisition	Description of Acquisition

SUPPLEMENT TO SCHEDULE 4.5
TO PLEDGE AND SECURITY AGREEMENT

Additional Information:

- (A) Copyrights
- (B) Copyright Licenses
- (C) Patents
- (D) Patent Licenses
- (E) Trademarks
- (F) Trademark Licenses
- (G) Trade Secret Licenses
- (H) Intellectual Property Exceptions

SUPPLEMENT TO SCHEDULE 4.6
TO PLEDGE AND SECURITY AGREEMENT

COMMERCIAL TORT CLAIMS

Douglas Dynamics Holdings, Inc.
Douglas Dynamics, L.L.C.
Douglas Dynamics Finance Company
Fisher, LLC

EXHIBIT B
TO PLEDGE AND SECURITY AGREEMENT

UNCERTIFICATED SECURITIES CONTROL AGREEMENT

This Uncertificated Securities Control Agreement dated as of _____, 2007 among _____ (the "Pledgor"), JPMorgan Chase Bank, N.A., as collateral agent for the Secured Parties (as defined in the ABL Pledge and Security Agreement dated as of May 21, 2007, among the Pledgor, the other Grantors party thereto and the Collateral Agent (the "Security Agreement")) and the Secured Parties (as defined in the Term Pledge and Security Agreement, dated as of May 21, 2007, among the Debtor, the other Grantors party thereto and the Collateral Agent), (the "Collateral Agent") and _____, a _____ corporation (the "Issuer"). Capitalized terms used but not defined herein shall have the meaning assigned in the Security Agreement. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

Section 1. Registered Ownership of Shares. The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of shares of the Issuer's [common] stock (the "Pledged Shares") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Agent or in connection with a disposition permitted by the Credit Agreement.

Section 2. Instructions. If at any time the Issuer shall receive instructions originated by the Collateral Agent relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person.

Section 3. Additional Representations and Warranties of the Issuer. The Issuer hereby represents and warrants to the Collateral Agent:

- (a) It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating the Pledged Shares pursuant to which it has agreed to comply with instructions issued by such other person; and
- (b) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Pledgor or the Collateral Agent purporting to limit or condition the obligation of the Issuer to comply with Instructions as set forth in Section 2 hereof.
- (c) Except for the claims and interest of the Collateral Agent and of the Pledgor in the Pledged Shares, the Issuer does not know of any claim to, or interest in, the

Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Agent and the Pledgor thereof.

(d) This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer.

Section 4. Choice of Law. This Agreement shall be governed by the laws of the State of New York.

1

Section 5. Conflict with Other Agreements. In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

Section 6. Voting Rights. Until such time as the Collateral Agent shall otherwise instruct the Issuer in writing, the Pledgor shall have the right to vote the Pledged Shares.

Section 7. Successors; Assignment. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Collateral Agent may assign its rights hereunder only with the express written consent of the Issuer and by sending written notice of such assignment to the Pledgor.

Section 8. Indemnification of Issuer. The Pledgor and the Collateral Agent hereby agree that (a) the Issuer is released from any and all liabilities to the Pledgor and the Collateral Agent arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's gross negligence or willful misconduct and (b) the Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's gross negligence or willful misconduct, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

Section 9. Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received or two (2) days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Pledgor: **[INSERT ADDRESS]**
Attention:
Telecopier:

Collateral Agent: 111 East Wisconsin Ave., Floor 15
Milwaukee, WI 53202-4815
Attention: Michael A. Hintz, Account Executive - ABL
Telephone: 414-977-6652
Telecopier: 414-977-6666

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
Attention: Seth E. Jacobson
Telephone: 312-407-0700
Telecopier: 312-407-0411

2

Issuer: **[INSERT ADDRESS]**
Attention:
Telecopier:

Any party may change its address for notices in the manner set forth above.

Section 10. Termination. The obligations of the Issuer to the Collateral Agent pursuant to this Control Agreement shall continue in effect until the security interests of the Collateral Agent in the Pledged Shares have been terminated pursuant to the terms of the Security Agreement and the Collateral Agent has notified the Issuer of such termination in writing. The Collateral Agent agrees to provide Notice of Termination in substantially the form of Exhibit A hereto to the Issuer upon the request of the Pledgor on or after the termination of the Collateral Agent's security interest in the Pledged Shares pursuant to the terms of the Security Agreement. The termination of this Control Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

Section 11. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF PLEDGOR]

By: _____
Name:
Title:

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

By: _____
Name: _____
Title: _____

[NAME OF ISSUER]

By: _____
Name: _____
Title: _____

3

Exhibit A

[Letterhead of Collateral Agent]

[Date]

[Name and Address of Issuer]

Attention:

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement between you, [the Pledgor] and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Control Agreement) from [the Pledgor]. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares, however nothing contained in this notice shall alter any obligations which you may otherwise owe to [the Pledgor] pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of Pledgor].

Very truly yours,

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

By: _____
Name: _____
Title: _____

1

EXHIBIT J

MORTGAGE

J-1

**MORTGAGE, ASSIGNMENT OF LEASES,
RENTS AND PROFITS AND SECURITY AGREEMENT**

DOUGLAS DYNAMICS, L.L.C.

Mortgagor

to

JPMORGAN CHASE BANK, N.A.
in its capacity as Collateral Agent for the Secured Parties
111 East Wisconsin Ave., Floor 15
Milwaukee, WI 53202-4815

Mortgagee

DATED: As of May 21, 2007

Premises located in:

Record and Return to:
Skadden Arps Slate Meagher & Flom LLP
300 South Grand Avenue
Los Angeles, California 90071
Attn: Eric Lee, Esq.

INDEX

	<u>Page No.</u>
1. Payment of Obligations and Performance of Covenants and Agreements	6
2. Title to Property	6
3. Intercreditor Agreement	7
4. Future Advances	7
5. Insurance	7
6. Impositions	7
7. Maintenance and Alterations	8
8. Leasing	8
9. Recording, Filing and Other Fees	9
10. Taxes Imposed on Mortgagee and the Secured Parties	9
11. Compliance with Laws, etc.	9
12. Inspection	9
13. Certificate of Mortgagor	9
14. Condemnation	10
15. Restoration	10
16. Default	11
17. Mortgagee's Right to Perform Mortgagor's Covenants	11
18. Contemporaneous Mortgages	11
19. Appointment of Receiver	11
20. Intentionally Deleted	12
21. Judicial Foreclosure	12
22. Sale in Parcels	12
23. Notice Upon Acceleration	13
24. Possession of Premises	13
25. Expenses of Mortgagee and/or the Secured Parties	13
26. Mortgagor's Waivers	13
27. Partial Foreclosure	14
28. No Waiver; Rights Cumulative	14
29. Attorneys' Fees	14
30. Interest After Maturity	15
31. No Credit for Taxes	15
32. Liens	15
33. Change in Taxation	15
34. Assignment of Leases and Rents	16
35. Security Agreement	17
36. No Release	17
37. Notices	18
38. Severability	18
39. Intentionally Deleted	18
40. Indemnification Against Liabilities	18
41. No Oral Changes	19
42. Governing Law	19
<hr/>	
43. Construction	19
44. Headings	19
45. After Acquired Property	19
46. Further Assurances	20
47. Definitions	20
48. Successors and Assigns	20
49. Credit Agreement	20
50. State Specific Provisions	20
Exhibit A	Description of the Land
Exhibit B	Existing Liens

**MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND PROFITS
AND SECURITY AGREEMENT**

(the “**Mortgagor**”), to **JPMORGAN CHASE BANK, N.A. (“JPMorgan”)**, as collateral agent (in such capacity, and together with its successors and assigns, the “**Mortgagee**”), having an office at 111 East Wisconsin Ave., Floor 15, Milwaukee, WI 53202-4815, Attention: Michael A. Hintz, Account Executive — ABL, for the Secured Parties (as such term and other capitalized terms used but not otherwise defined herein are defined in the Credit Agreement, defined below).

WITNESSETH:

WHEREAS, Mortgagor is the owner of the fee interest in those certain parcels of land lying and being situated in the City of Rockland, Knox County, Maine, as more particularly described in Exhibit A attached hereto;

WHEREAS, Mortgagor, Fisher, LLC, a Delaware limited liability company (“**Fisher**”) and Douglas Dynamics Finance Company, a Delaware corporation (“**DD Finance**”), as Borrowers, Douglas Dynamics Holdings, Inc., a Delaware corporation (“**Holdings**”), as Guarantor, the banks and financial institutions having Revolving Loan Commitments (as defined therein) 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, as sole bookrunner, sole lead arranger, syndication agent, documentation agent and administrative agent for the Lenders (“**ABL Administrative Agent**”), and JPMorgan, as collateral agent for the Lenders, have entered into 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, the “**Credit Agreement**”), pursuant to which Lenders have agreed to make, and Mortgagee has agreed to administer, certain credit facilities in an aggregate amount not to exceed \$60,000,000, which extensions of credit shall be used for the purposes permitted under the Credit Agreement, upon the terms and conditions contained in the Credit Agreement; and

WHEREAS, Mortgagor has agreed to execute and deliver to Mortgagee this Mortgage in order to secure Mortgagor’s performance of Mortgagor’s obligations under the Credit Agreement and under any of the other Credit Documents;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, including Mortgagee’s entering into the Credit Agreement, the receipt and legal sufficiency of which are hereby expressly acknowledged by all parties, to secure the full and complete payment and performance of the Obligations, including Mortgagor’s performance of Mortgagor’s

obligations pursuant to the Credit Agreement, this Mortgage and the other Credit Documents, Mortgagor and Mortgagee hereby agree as follows:

Mortgagor does hereby grant, pledge, mortgage, warrant, sell, transfer, assign, and convey unto Mortgagee subject only to the Permitted Liens and Existing Liens (defined below), all of its right, title and interest in the following (collectively, the “**Property**”):

- A. All that certain land located in the City of Rockland, Knox County, Maine, and more particularly described in Exhibit A annexed hereto and made a part hereof (collectively, the “**Land**”).
- B. All the buildings, structures and improvements, now or at any time hereafter erected on the Land or any part thereof (collectively, the “**Buildings**”).
- C. All machinery, apparatus, equipment, personal property and fixtures of every kind and nature whatsoever now or hereafter located in, on or about any one or more of the Buildings or upon the Land, or attached to or used or useable in connection with the operation or maintenance of the Land or any one or more of the Buildings, or any part thereof, and now owned or hereafter acquired (collectively, the “**Building Equipment**”; the Land, the Buildings and the Building Equipment being hereafter sometimes collectively referred to as the “**Premises**”).
- D. All right, title and interest of Mortgagor, whether now owned or hereafter acquired, in and to any opened or proposed avenues, streets, roads, public places, sidewalks, alleys, strips or gores of land, in front of or adjoining the Land or any one or more of the Buildings and all easements, tenements, hereditament, appurtenances, rights and rights of way, public or private, pertaining or belonging to the Land or any one or more of the Buildings.
- E. All insurance proceeds and all awards and payments, subject to applicable provisions of this Mortgage, including interest thereon, and the right to receive the same, which may be made in respect of all or any part of any of the Premises or any estate or interest therein or appurtenant thereto, as a result of damage to or destruction of all or any part of any of the Premises, the exercise of the right of condemnation or eminent domain, the closing of, or the alteration of the grade of, any street on or adjoining the Land, or any other injury to or decrease in the value of all or any part of any of the Premises.
- F. All right, title and interest of Mortgagor in and to any and all present and future Leases (as defined in Paragraph 47) of all or any part of the Premises, and in and to the rents, issues and profits payable thereunder and cash or securities deposited thereunder as lessees’ security deposits.
- G. All franchises, permits, licenses and rights therein respecting the use, occupation and operation of the Premises or the activities conducted thereon or therein.
- H. All right, title and interest of Mortgagor in and to any minerals, oil or gas located on, under or appurtenant to the Land.

5

-
- I. All right, title and interest of Mortgagor in and to any tax refunds with respect to the Premises.
 - J. To the extent assignable, all of Mortgagor’s interest in and to all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of the Premises and all right, title and interest of Mortgagor therein (collectively, the “**Contracts**”).
 - K. All of Mortgagor’s interest in and to all easements, rights, licenses, privileges and appurtenances including, without limitation, development and air rights now or hereafter belonging or in any way appertaining to the Land.
 - L. All of the estate and rights of Mortgagor now or hereafter acquired in and to land lying in streets, roads, ways and alleys, open or proposed, adjoining or contiguous to the Land.
 - M. The rents, issues and profits of any of the foregoing.

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns, forever. Provided, that if (i) Mortgagor shall perform all obligations hereunder and (ii) the Obligations (including, without limitation, certain credit facilities in an aggregate amount not to exceed \$120,000,000, all as further described in the Credit Agreement, and any “Future Advances” and “Contingent Obligations” referred to in Section 50 of this Mortgage) are paid in full, the Commitments are cancelled or terminated and all outstanding Letters of Credit are cancelled or have expired, then this Mortgage shall be released without warranty, at the cost and request of Mortgagor.

AND MORTGAGOR COVENANTS, REPRESENTS AND WARRANTS TO AND FOR THE BENEFIT OF MORTGAGEE AND THE SECURED PARTIES AS FOLLOWS:

1. Payment of Obligations and Performance of Covenants and Agreements Mortgagor shall pay or perform the Obligations when due in accordance with the provisions of the Credit Agreement, this Mortgage, and the other Credit Documents and perform the covenants and agreements of Mortgagor set forth in the Credit Documents.

2. Title to Property Mortgagor represents and warrants that (a) it owns good and marketable fee simple title to the Premises, (b) it has the good and unrestricted right, full power and lawful authority to make this Mortgage in accordance with the terms hereof, (c) Mortgagor has obtained any and all consents and approvals necessary or required for the making of this Mortgage, and the making of this Mortgage will not violate any contract or agreement to which Mortgagor is a party or by which the Property is bound, and (d) the Premises is free of all liens, encumbrances, adverse claims and other defects of title whatsoever except those items listed on Exhibit B annexed hereto and made a part hereof (collectively, the “Existing Liens”) and Permitted Liens. Mortgagor does hereby and shall forever warrant and defend its title to and interest in the Property and the validity and priority of the lien of this Mortgage, subject to the Existing

6

Liens and the Permitted Liens, to Mortgagee and the Secured Parties, their respective successors and assigns, against all claims and demands whatsoever of any Person or Persons. As of the date hereof, there are no defenses or offsets to this Mortgage or to the Obligations.

3. Intercreditor Agreement Notwithstanding anything herein to the contrary, and regardless of the priority of recordation of this Mortgage, the lien and security interests granted to the Mortgagee pursuant to this Mortgage and the exercise of any right or remedy by such Mortgagee hereunder are subject to the provisions of that certain Intercreditor Agreement, dated as of May 21, 2007 (the “Intercreditor Agreement”), by and among Mortgagor, Fisher, DD Finance, Holdings, Mortgagee, ABL Administrative Agent, and Credit Suisse, Cayman Islands Branch, in its capacities as collateral agent (together with its successors and assigns from time to time in such capacity, the “Term Collateral Agent”) and administrative agent under the Term Loan Documents (as defined therein). In the event of any conflict between the terms of the Intercreditor Agreement and this Mortgage, the terms of the Intercreditor Agreement shall govern.

4. Future Advances Without limiting the generality of any other provision hereof, or the terms and provisions of the Credit Agreement, the Obligations shall include, without limitation: (a) all existing indebtedness of Mortgagor to Mortgagee and/or any of the Secured Parties evidenced by any of the Credit Documents; (b) all future advances that may subsequently be made by Mortgagee and/or the Lenders as provided by any of the Credit Documents; and (c) all other indebtedness, if any, of Mortgagor to Mortgagee and/or any of the Secured Parties now due or to become due or hereafter contracted pursuant to any of the Credit Documents; provided that the maximum principal amount of all existing indebtedness, future advances, readvances of sums repaid and all other indebtedness secured hereby at any one time shall not exceed the total sum of \$120,000,000 (exclusive of interest thereon, attorneys’ fees and costs, taxes, insurance premiums and all other obligations hereunder).

5. Insurance

(a) Mortgagor shall maintain in full force and effect with respect to the Premises the insurance as required by Section 5.5 of the Credit Agreement.

(b) In the event of a foreclosure of this Mortgage or other action or proceeding taken by Mortgagee pursuant to this Mortgage, the purchaser of the Premises shall succeed to all of the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance which Mortgagor is required to maintain under Paragraph 5(a) and to all proceeds of such insurance.

6. Impositions

(a) Mortgagor shall pay, not later than the final delinquency date thereof, all real estate taxes, personal property taxes, assessments, water rates and sewer rents, license fees, all charges which may be imposed for the use of vaults, chutes, areas and

7

other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Land, and any other amounts which could be or become a lien upon or against the Property or any part thereof (collectively, the “Impositions”); provided, no such Imposition 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. Notwithstanding the foregoing, Mortgagor shall promptly, and in any event on demand, pay such contested Imposition if at any time all or any part of the Property shall be in danger of being foreclosed, sold, forfeited, or otherwise lost or if such contest shall be discontinued. During the continuance of any Event of Default, upon demand by Mortgagee, Mortgagor will pay the whole of any assessment (an “Assessment”) for local improvements which may be payable in installments, notwithstanding that such installments may not be due and payable at the time of such demand.

(b) Mortgagor shall, upon request of Mortgagee, deliver to Mortgagee, within twenty (20) days after the final delinquency date thereof of any Imposition or Assessment, receipts evidencing such payment or other proof of payment satisfactory to Mortgagee.

7. Maintenance and Alterations Mortgagor will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, the Premises and from time to time will make or cause to made all appropriate repairs, renewals and replacements thereof.

8. Leasing Mortgagor represents that there are no Leases now in effect. Mortgagor shall not enter into any Lease of all or any part of any of the Premises without in each instance obtaining Mortgagee’s prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Mortgagor shall deliver to Mortgagee a duplicate original of each Lease promptly after the execution thereof. At the option of Mortgagee, each Lease, and all renewals, replacements, extensions, and modifications thereof, and all rights of the tenant thereunder, shall be subject and subordinate to this Mortgage, and to each and every advance made or thereafter made hereunder or under the other Credit Documents and to all renewals, additions, amendments, supplements, modifications, consolidations, spreaders, replacements, and extensions of this Mortgage and shall contain provisions obligating the tenants thereunder to attorn to Mortgagee or any purchaser therefrom if Mortgagee or such purchaser succeeds to the interest of Mortgagor under such Lease. Mortgagor shall fully and promptly perform all of the obligations to be performed by the lessor under any and all Leases. Mortgagor shall enforce the performance and observance of each and every obligation to be performed or observed by the lessees under such Leases. Mortgagor shall give prompt notice to Mortgagee of (a) any notice received by Mortgagor of any default by the lessor under any Lease, (b) the commencement of any action or proceeding by any lessee the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable thereunder, (c) any notice of default given by Mortgagor to the lessee under any Lease, or (d) the interposition by any lessee of any defense or counterclaim in any action or proceeding brought by Mortgagor against such lessee; and

8

Mortgagor will cause a copy of any process, pleading or notice received or served by Mortgagor in reference to any such action, defense or claim to be promptly delivered to Mortgagee. Mortgagor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall

not mingle such funds with other funds. Mortgagor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

9. Recording, Filing and Other Fees Mortgagor shall pay all recording and filing fees, all recording taxes, and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of this Mortgage and any other Credit Documents, and shall reimburse Mortgagee and each of the Secured Parties on demand for all costs and expenses of any kind incurred by Mortgagee or any of the Secured Parties in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements). Mortgagor will, at any time on request of Mortgagee, execute or cause to be executed financing statements, continuation statements, or the like, in respect of any Building Equipment. Mortgagor shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

10. Taxes Imposed on Mortgagee and the Secured Parties Mortgagor shall pay all taxes (except income, inheritance and franchise taxes, taxes on the receipt of debt service payments, or taxes in lieu of any of the foregoing) imposed on Mortgagee or any of the Secured Parties by reason of its ownership of this Mortgage or any of the other Credit Documents.

11. Compliance with Laws, etc. Mortgagor shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

12. Inspection Mortgagee and its authorized representatives shall have the right, at Mortgagee's option, at reasonable times during normal business hours and upon reasonable prior written notice, and as often as may be reasonably requested, to enter the Premises for the purpose of inspecting the same and any other Collateral.

13. Certificate of Mortgagor Mortgagor, upon request of Mortgagee or any of the Secured Parties, shall certify to Mortgagee or to such Secured Party or to any proposed assignee of or participant in this Mortgage, by an instrument in form reasonably satisfactory to Mortgagee or such Secured Party, duly acknowledged, the amount of the Obligations then owing, whether any offsets or defenses exist against payment or performance of all or any portion of the Obligations and anything else that Mortgagee or such Secured Party might reasonably request, within ten (10) days if the request is made personally, or within fifteen (15) days if the request is made by mail. Mortgagee, Secured Parties and any actual or proposed assignee of or participant in this Mortgage shall have the right to rely on such certification.

9

14. Condemnation

(a) Mortgagor shall give notice to Mortgagee upon Mortgagor receiving written notice of the commencement of any action or proceeding to take all or any part of the Premises by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Land. Mortgagee may participate in any such action or proceeding in the name of Mortgagee or, whenever necessary, in the name of Mortgagor, and Mortgagor shall deliver to Mortgagee such instruments as Mortgagee shall request to permit such participation. Mortgagor shall not settle any such action or proceeding or agree to accept any award or payment without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed), and such award or payment and any interest thereon (hereinafter collectively called the "Award") shall be applied in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement.

(b) The application of any Award toward payment of the Obligations shall not be deemed a waiver by Mortgagee or any of the Secured Parties of its right to receive payment of the balance of the Obligations in accordance with the provisions of the Credit Documents. Mortgagee shall have the right, but shall be under no obligation, to question the amount of the Award, and Mortgagee may accept the same without prejudice to the rights that Mortgagee may have to question such amount. In any such condemnation or eminent domain action or proceeding Mortgagee may be represented by attorneys selected by Mortgagee, and all sums paid by Mortgagee in connection with such action or proceeding (including, without limitation, reasonable attorneys' fees to the extent permitted by law) shall, on demand, be immediately due from Mortgagor to Mortgagee and the same shall be secured by this Mortgage.

(c) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, the unpaid principal portion of the Advances shall continue to bear interest at the rate payable pursuant to the applicable Credit Documents until the Award shall have been actually received by Mortgagee, and any reduction in the Obligations resulting from the application by Mortgagee of the Award shall be deemed to take effect only on the date of such receipt.

15. Restoration If the Buildings or the Building Equipment shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any taking in condemnation proceedings or the exercise of any right of eminent domain, Mortgagor shall promptly restore, replace or rebuild the same to as nearly as possible the value, quality and condition they were in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by Mortgagee which approval shall not be unreasonably withheld or delayed, or apply the amount of any Award or insurance proceeds received with respect thereto, in each case in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement. Mortgagor shall give prompt notice to Mortgagee of any damage or destruction to the Buildings or Building Equipment by fire or other casualty, as well as the initiation of any condemnation or eminent domain proceeding affecting the same.

10

16. Default

(a) Any Event of Default under the Credit Agreement shall constitute an Event of Default hereunder and Mortgagee shall have all of the rights of the Administrative Agent and Collateral Agent under the Credit Agreement and all of the remedies hereunder.

(b) All notice and cure periods provided in the Credit Agreement shall run concurrently with any notice and cure periods provided under applicable law.

17. Mortgagee's Right to Perform Mortgagor's Covenants If there shall be an Event of Default, Mortgagee may, at its option, cure such Event of Default, and Mortgagee and its representatives shall have the right to enter the Premises to do so, and the amounts advanced by, and the other costs and expenses of, Mortgagee in curing such Event of Default, with interest from the time of the advances or payments at the Base Rate plus the Applicable Margin, shall, on demand, be immediately due from Mortgagor to Mortgagee and shall be secured by this Mortgage.

18. Contemporaneous Mortgages THIS MORTGAGE IS MADE CONTEMPORANEOUSLY WITH TWO (2) OTHER MORTGAGES OR DEEDS OF TRUST OF EVEN DATE HERewith (as any of the same may be amended, supplemented, restated, severed, consolidated, spread, partially released, increased or otherwise modified from time to time, the "Contemporaneous Mortgages") GIVEN TO MORTGAGEE COVERING PROPERTY LOCATED IN THE STATES OF TENNESSEE AND WISCONSIN. The Contemporaneous Mortgages secure the Obligations. Upon the occurrence of an Event of Default, Mortgagee may proceed under this Mortgage and/or the Contemporaneous Mortgages against any of such property and/or the Property in one or more parcels and in such manner and order as Mortgagee shall elect. Mortgagor hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, any right to have the property and/or the Property covered by the Contemporaneous Mortgages marshalled upon any foreclosure of this Mortgage or the Contemporaneous Mortgages.

19. Appointment of Receiver After the occurrence and during the continuance of an Event of Default, Mortgagee may apply for the appointment of

a receiver of the Rents (as defined in Paragraph 47), issues, and profits of all or any part of the Property from whatever source derived and thereupon it is hereby expressly covenanted and agreed that the court shall forthwith appoint such receiver with the usual powers and duties of receivers in like cases; and said appointment shall be made by the court ex parte as a matter of strict right to Mortgagee, without notice to or demand upon Mortgagor or any Person claiming through or under Mortgagor, and Mortgagee shall be entitled to the appointment of such receiver as a matter of right, to the extent not prohibited by applicable law, without consideration of the value of the Property as security for the amounts due to Mortgagee or the Secured Parties or the solvency of any Person liable for the payment of such amounts. Mortgagor hereby specifically waives the right to object to the appointment of a receiver as aforesaid and hereby expressly consents that such appointment shall be made ex parte and without notice to Mortgagor as an

admitted equity and as a matter of absolute right to Mortgagee. In order to maintain and preserve the Property and to prevent waste and impairment of its security, Mortgagee may, at its option, advance monies to the appointed receiver and all such sums advanced shall become secured obligations and shall bear interest from the date of such advance at the rate of interest specified in Section 2.9 of the Credit Agreement.

20. Intentionally Deleted

21. Judicial Foreclosure After the occurrence and during the continuance of an Event of Default, Mortgagee may institute an action of foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement hereof and realization on the Property or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire principal then outstanding under the Credit Documents, with interest thereon at the rate stipulated in the Credit Documents to the date of default and thereafter at the default interest rate specified in Section 2.9 of the Credit Agreement together with all other sums secured by this Mortgage, all costs of suit, including, without limitation, the expenses which are described in Paragraphs 25 and 29, and interest at the default interest rate specified in Section 2.9 of the Credit Agreement on any judgment obtained by Mortgagee from and after the date of any judicial sale of any of the Property until actual payment. Upon any sale or sales made hereunder, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee and/or any of the Secured Parties may bid for and acquire any of the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Obligations the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. Except as otherwise provided in the Credit Agreement, the proceeds of such sale shall be applied first to the payment of the costs and charges of such sale, including, without limitation, Mortgagee's attorneys' fees, (to the extent permitted by law), and second to the payment of the Obligations, the surplus money, if any, to be paid to the Person(s) legally entitled thereto (including Mortgagor, to the extent so entitled, if at all). Upon the request of Mortgagee and to the extent not prohibited by applicable law, Mortgagor shall execute and file with the clerk of the court a legally sufficient waiver of any statutory waiting period with respect to the execution of a judgment obtained by Mortgagee in connection with any foreclosure proceedings. The obligation of Mortgagor to so execute and file such waiver shall survive the termination of this Mortgage. Following a foreclosure sale, the sheriff shall deliver to the purchaser the sheriff's deed (and bill of sale as to any personalty) conveying the property so sold without any covenant or warranty, express or implied.

22. Sale in Parcels In the event of a foreclosure of this Mortgage or upon any sale under this Mortgage pursuant to judicial proceedings or otherwise, the Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Mortgagee in its sole discretion may select.

23. Notice Upon Acceleration Whenever Mortgagee in this Mortgage is given the option to accelerate the maturity of all or part of the Obligations upon the occurrence of an Event of Default, Mortgagee may, to the extent permitted by law, do so without prior notice or demand to or upon Mortgagor except as otherwise specifically provided herein.

24. Possession of Premises To the extent permitted by law, after the occurrence and during the continuance of an Event of Default, Mortgagee and its agents and any receiver appointed by a court are authorized to (a) take possession of the Premises, with or without legal action, and by force if necessary; (b) lease the Premises or make modifications to or cancel Leases; (c) maintain, repair, alter, and restore the Premises; (d) with or without taking possession, collect all Rents and profits payable under all Leases directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists under this Mortgage accompanied by a demand on such lessee for the payment to Mortgagee of all Rents due and to become due under its Lease, and Mortgagor FOR THE BENEFIT OF MORTGAGEE AND EACH SUCH LESSEE hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said Rents to Mortgagee without regard to the truth of Mortgagee's statement of an Event of Default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default such that the payment of rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the Lease for the payment of Rents by the lessee to Mortgagor; and (e) after deducting all costs of collection and administration expense, apply the net Rents and profits to the payment of Impositions, insurance premiums and all other carrying charges (including, without limitation, agents' compensation and fees and reasonable costs of counsel to the extent permitted by law, and receivers) and to the maintenance, repair or restoration of the Premises, or, except as otherwise provided in the Credit Agreement, on account and in reduction of the Obligations in such order and amounts as Mortgagee in Mortgagee's sole discretion may elect. Mortgagee shall be liable to account only for Rents and profits actually received by Mortgagee.

25. Expenses of Mortgagee and/or the Secured Parties All sums (including reasonable attorneys' fees and disbursements, to the extent permitted by law) paid by Mortgagee and/or any of the Secured Parties in connection with any litigation to prosecute or defend the rights and obligations created by this Mortgage, with interest thereon at the default interest rate specified in Section 2.9 of the Credit Agreement from the time of payment by Mortgagee and/or any of the Secured Parties shall, on demand, be immediately due from Mortgagor to Mortgagee and/or any such Secured Party and shall be added to and included in the Obligations and shall be secured by this Mortgage.

26. Mortgagor's Waivers

(a) Mortgagor, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, (i) the benefit of any and all valuation and appraisal laws, (ii) any right of redemption whether statutory or otherwise, in respect of the Property, (iii) any applicable

homestead or dower laws, (iv) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of court in the nature of any one or more of them, (v) any right to have any of the Property marshalled upon foreclosure of this Mortgage, (vi) the right to interpose any set-off, recoupment, counterclaim or cross-claim in any litigation in any court with respect to, in connection with, or arising out of this Mortgage or any of the other Credit Documents unless such set-off, recoupment, counterclaim or cross-claim could not, by reason of the applicable Federal or State procedural laws, be interposed, pleaded or alleged in any other action, and (vii) trial by jury in connection with any litigation arising out of this Mortgage or any of the other Credit Documents and any right it may have to claim or recover in any such litigation any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages.

(b) Mortgagee, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, trial by jury in connection with any litigation arising out of this Mortgage or any of the other Credit Documents.

27. Partial Foreclosure Mortgagee may from time to time, if permitted by law, take action to recover any sums, whether interest, principal or any other sums, required to be paid under this Mortgage or any other Credit Document as the same become due, without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Mortgagor existing when such earlier action was commenced. Mortgagee may also foreclose this Mortgage for any sums due under this Mortgage or any other Credit Document and the lien of this Mortgage shall continue to secure the balance of the Obligations due.

28. No Waiver; Rights Cumulative No failure or delay on the part of Mortgagee or any of the Secured Parties 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 Mortgagee and each of the Secured Parties 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.

29. Attorneys' Fees If this Mortgage shall be foreclosed, or if any of the Credit Documents is placed in the hands of an attorney for collection or is collected through any court, including any bankruptcy court, there shall be included in the computation of the sums secured hereby, to the extent permitted by law, the amount of a reasonable fee for the services of the attorney retained by Mortgagee in the foreclosure action or proceeding, and all disbursements, costs, allowances and additional allowances provided by law.

14

30. Interest After Maturity The Obligations secured by this Mortgage shall bear interest from and after maturity, whether or not resulting from acceleration, at the default interest rate specified in Section 2.9 of the Credit Agreement, but this shall not constitute an extension of time for payment of the Obligations.

31. No Credit for Taxes Mortgagor shall not claim or demand or be entitled to any credit or credits on account of any of the sums secured hereby by reason of the Impositions assessed against all or any part of the Property or for any payments made on account thereof. No deductions shall be made or claimed from the taxable value of all or any part of the Premises by reason of this Mortgage.

32. Liens This Mortgage is and shall be maintained as a valid first lien on the Property subject only to any encumbrances created pursuant to the Credit Documents and the Existing Liens and the Permitted Liens, if any. Notwithstanding any provision in the Credit Documents to the contrary, Mortgagor shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the Rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien"), whether senior or junior in lien to this Mortgage, other than the lien of (i) this Mortgage and (ii) the Permitted Liens (including 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; provided, however, that Mortgagor shall give Mortgagee at least twenty (20) days prior written notice of any Permitted Lien described in the parenthetical to clause (ii) above which is to be created after the date hereof together with a reasonably detailed description thereof; and provided, further, that nothing contained in this Paragraph shall require Mortgagor to pay any real estate taxes or other Impositions prior to the time when same are required to be paid under this Mortgage. Mortgagor will keep and maintain all of the Premises free from all liens of Persons supplying labor or materials relating to the construction, alteration, modification or repair of the Premises. If any such lien shall be filed against any of the Property, Mortgagor agrees to discharge the same of record (by payment, bonding or otherwise) within 10 days of notice of the filing thereof. No financing statement, conditional bill of sale or chattel mortgage shall be made or filed against any Building Equipment without the prior consent of Mortgagee and if at any time there should be any (with or without the consent of Mortgagee), then upon the occurrence and during the continuance of an Event of Default, all right, title and interest of Mortgagor in and to all deposits and payments made thereon are hereby assigned to Mortgagee.

33. Change in Taxation In the event of the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (a) deducting or allowing Mortgagor to deduct from the value of the Property for the purpose of taxation any lien or security interest thereon, (b) imposing, modifying or deeming applicable any reserve or special requirement against deposits in or for the account of, or loans by, or other liabilities of, or other assets held by Mortgagee or any of the Secured Parties, or (c) subjecting Mortgagee or any of the Secured Parties to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby,

15

or the manner of collection of such taxes, in each such case, so as to affect this Mortgage, the Obligations, Mortgagee or any of the Secured Parties, and the result is to increase the taxes imposed upon or the cost to Mortgagee or any of the Secured Parties of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder or under the other Credit Documents, then, and in any such event, Mortgagor shall, on demand, pay to Mortgagee for the account of Mortgagee or any of the Secured Parties, as the case may be, such additional amounts as may be required to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful or would constitute usury under applicable law, then Mortgagee may, at its option, require Mortgagor to make a partial repayment of the Obligations in an amount equal to the then value of the Premises.

34. Assignment of Leases and Rents Mortgagor absolutely and unconditionally assigns to Mortgagee the Rents, issues and profits of the Premises as further security for the payment of the Obligations and Mortgagor grants to Mortgagee during the existence of an Event of Default the right to enter the Premises for the purpose of collecting the same and to let the Premises, or any part thereof, and, except as otherwise provided in the Credit Agreement, to apply said Rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the payment in full of the Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit. Mortgagee hereby waives the right to enter the Premises for the purpose of collecting said Rents, issues and profits, and Mortgagor shall be entitled to collect, receive and use said Rents, issues and profits, until the occurrence and during the continuance of an Event of Default. During the continuance of any Event of Default, the right of Mortgagor to collect, receive and use said Rents, issues and profits, shall be revoked forthwith. Further, from and after delivery of written notice of such revocation, constructive possession of the Premises shall be vested in Mortgagee, and this assignment shall be activated and perfected. Notwithstanding the foregoing, this assignment shall also be activated and perfected upon Mortgagee's exercising, upon the occurrence and during the continuance of an Event of Default, any of the following remedies pursuant to this Mortgage: (i) taking actual possession of the Premises; (ii) moving or applying for the appointment of a receiver; (iii) filing or commencing an action to foreclose this Mortgage; or (iv) collecting the Rents directly from the tenant(s). Mortgagor shall, from time to time after request by Mortgagee, execute, acknowledge and deliver to Mortgagee, in form reasonably satisfactory to Mortgagee, separate assignments effectuating the foregoing. Neither Mortgagee nor the Secured Parties shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any Lease or other agreement affecting all or any part of the Premises, and Mortgagor hereby agrees to indemnify Mortgagee and the Secured Parties for and hold them harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Premises upon Mortgagee or the Secured Parties, nor make Mortgagee or the other Secured Parties liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Premises resulting in injury, death or property damage. In addition, after the occurrence and during the continuance of

16

an Event of Default and following the giving of notice to Mortgagor, Mortgagor will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said Rents, issues and profits, the fair and reasonable rental value for the use and occupancy of the Premises or of such part thereof as may be in the possession of Mortgagor, and upon default in any such payment will vacate and surrender the possession thereof to Mortgagee or to such receiver, and in default thereof may be evicted by summary or other proceedings.

35. Security Agreement It is the intention of the parties hereto that this instrument shall constitute a Security Agreement and a Financing Statement within the meaning of the Uniform Commercial Code as enacted in the state in which the Land is located with respect to the personalty and fixtures comprising a part of the Property, and that a security interest shall attach thereto for the benefit of Mortgagee, as secured party, to further secure the Obligations. Mortgagor hereby authorizes Mortgagee to file financing and continuation statements with respect to such collateral in which Mortgagor has a mortgageable interest, without the signature of Mortgagor whenever lawful, and upon request, Mortgagor shall promptly execute financing and continuation statements in form satisfactory to Mortgagee to further evidence and secure Mortgagee's interest in such collateral, and shall pay all filing fees in connection therewith. In the event of the occurrence and during the continuance of an Event of Default, Mortgagee, pursuant to the applicable provision of the Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that in the event Mortgagee elects to proceed with respect to collateral constituting personalty or fixtures separately from the real property, without demand, notice or advertisement whatsoever except that where an applicable statute requires reasonable notice of sale or the dispositions, the giving of ten (10) days' notice by Mortgagee to Mortgagor, shall be deemed to be reasonable notice thereof and Mortgagor waives any other notice with respect thereto.

36. No Release Neither Mortgagor nor any other Person now or hereafter obligated for the payment or performance of all or any portion of the Obligations shall be released from paying such Obligations and the lien of this Mortgage shall not be affected by reason of (a) the failure of Mortgagee or any of the Secured Parties to comply with any request of Mortgagor, or of any other Person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any of the covenants and agreements of Mortgagor under the Credit Documents, (b) the release, regardless of consideration, of the whole or any part of the security held for the Obligations, (c) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or performance of all or any portion of the Obligations, or (d) any agreement or stipulation extending the time of payment or modifying the terms of any of the Credit Documents, and in the event of such agreement or stipulation, Mortgagor and all such other Persons shall continue to be liable under the Credit Documents, as amended by such agreement or stipulation, unless expressly released and discharged in writing by Mortgagee and the Secured Parties.

17

37. Notices All notices, consents and other communications provided for herein shall be sent to such Person's address as follows (or to such other address indicated in an unrevoked written notice from such Person given in accordance the terms of this Paragraph):

(a) if to Mortgagor, Douglas Dynamics, L.L.C., 7777 North 73rd Street, Milwaukee, WI 53223, Attention: Chief Executive Officer and President, Teletcopy No.: (414) 354-8448, with a copy to Aurora Capital Group, 10877 Wilshire Boulevard, Suite 2100, Los Angeles, CA 90024, Attention: Secretary, Douglas Dynamics Holdings, Inc., Teletcopier No.: (310) 824-2791, with a copy to Gibson, Dunn & Crutcher LLP, 333 S. Grand Avenue, Los Angeles, CA 90071, Attention: Jeff R. Hudson, Esq., Teletcopy No.: 213-229-6332; and

(b) if to Mortgagee or Collateral Agent, at JPMorgan Chase Bank, N.A., 111 East Wisconsin Ave., Floor 15, Milwaukee, WI 53202-4815, Attention: Attention: Michael A. Hintz, Account Executive — ABL, Teletcopy No.: 414-977-6666, with a copy to Skadden Arps Slate Meagher & Flom LLP, 333 West Wacker Drive, Suite 2100, Chicago, IL 60606, Attention: Seth E. Jacobson, Esq., Teletcopy No.: (312) 407-0411; and

(c) if to any of the Secured Parties, at the address set forth below such Secured Party's name on the signature pages of the Credit Agreement.

Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, 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 Mortgagee shall be effective until received by Mortgagee.

38. Severability In case any provision in or obligation hereunder 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.

39. Intentionally Deleted

40. Indemnification Against Liabilities Mortgagor will defend, indemnify, pay and hold harmless Mortgagee and the Secured Parties and their respective officers, partners, directors, trustees, employees, agents and Affiliates of Mortgagee and each of the Secured Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee and any of the Secured Parties by reason of (a) ownership of a mortgagee's or participating lender's interest in the Property, (b) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Premises or any part thereof or the

18

adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, unless due to the willful misconduct of Mortgagee or such Secured Party, (c) any use, nonuse or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof made or suffered to be made by or on behalf of Mortgagor, (f) any negligence or tortious act on the part of Mortgagor or any of its agents, contractors, lessees, licensees or invitees, or (g) any work in connection with any alterations, changes, new construction or demolition of the Premises. All amounts payable to Mortgagee and the Secured Parties under this Paragraph shall be payable promptly on demand and shall be deemed indebtedness and Obligations secured by this Mortgage and any such amounts shall bear interest at the default interest rate specified in Section 2.9 of the Credit Agreement from the date of such demand. In case any action, suit or proceeding is brought against Mortgagor, Mortgagee and/or any of the Secured Parties by reason of any such occurrence, Mortgagor, upon request of Mortgagee or any of the Secured Parties will, at Mortgagor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Mortgagee or such Secured Party and approved by Mortgagor.

41. No Oral Changes This Mortgage and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

42. Governing Law THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS MORTGAGE AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE

SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPALS THEREOF.

43. Construction This Mortgage shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

44. Headings Paragraph 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.

45. After Acquired Property All property of every kind which is hereafter acquired by Mortgagor which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by

19

Mortgagor, and without any further giving of a deed of trust and/or mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage.

46. Further Assurances Mortgagor shall execute, acknowledge and deliver to Mortgagee any documents and instruments which Mortgagee may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting of Mortgagee's security and rights under this Mortgage, in form and substance reasonably satisfactory to Mortgagee.

47. Definitions The following terms shall, for all purposes of this Mortgage, have the respective meanings herein specified unless the context otherwise requires and such meanings shall apply equally to the singular and plural forms of such defined terms unless a definition is provided herein for both the singular and plural form of such defined term:

(a) **"Lease"** shall mean every lease or occupancy agreement for the use or hire of all or any portion of the Premises, which shall be in effect at the date hereof or which shall hereafter be entered into by or on behalf of Mortgagor.

(b) **"Rents"** shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Land and the Building, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property, and proceeds, if any, from business interruption or other loss of income insurance.

48. Successors and Assigns The terms, covenants and provisions of this Mortgage shall apply to and be binding upon Mortgagor and the successors and assigns of Mortgagor and shall inure to the benefit of Mortgagee, the Secured Parties and their respective successors and assigns. All grants, covenants, terms, provisions, and conditions contained herein shall run with the Land.

49. Credit Agreement In the event of any inconsistency or conflict between the terms and provisions of the Credit Agreement and this Mortgage, the terms and provisions of the Credit Agreement shall control.

50. State Specific Provisions

(a) **Applicability of Maine Law:** Notwithstanding anything else contained herein to the contrary, where provisions contained in this Section 50 conflict with other provisions of this Mortgage, these provisions shall control.

20

(b) **Statutory Condition:** This Mortgage is given upon the STATUTORY CONDITION, which is incorporated herein by reference. To the extent that the provisions of this Mortgage and the provisions set forth in the Statutory Conditions conflict, the provisions of this Mortgage shall control to the extent permitted by applicable law.

(c) **Statutory Power of Sale:** If any Event of Default shall occur, the Mortgagee shall have the right to foreclose this Mortgage under any legal method of foreclosure in existence at the time or now existing, or under any other applicable law, including, without limitation, the **STATUTORY POWER OF SALE**, which is expressly incorporated herein by reference, to the extent authorized or allowed by any present or future law of the State of Maine. In connection therewith, Mortgagor acknowledges that this Mortgage secures a loan or loans for business and commercial purposes and that this Mortgage is given primarily for a business, commercial or agricultural purpose.

(d) **Non-Waiver:** Mortgagor agrees for itself, its successor and assigns, that the acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of this Mortgage, of insurance proceeds, eminent domain awards, rents or anything else of value to be applied on or to the Secured Obligations by the Mortgagee, the Lenders or any person or party holding under Lender shall not constitute a waiver of such foreclosure by the Mortgagee or waiver of the failure of performance by the Mortgagor of any covenants or agreements contained herein, in the other Credit Documents, or in the Credit Agreement. This agreement by Mortgagor shall be that agreement referred to in 14 M.R.S.A. § 6204, as amended, as necessary to prevent such waiver of foreclosure. This agreement by Mortgagor is intended to apply to the acceptance and such applications of any such insurance proceeds, eminent domain awards, rents and other sums or anything else of value, whether the same shall be accepted from, or for the account of, Mortgagor or from any other sources whatsoever by the Mortgagee, or by any person or party holding under Mortgagee at any time or times in the future while any portion of the Obligations shall remain outstanding.

(e) **Open-ended Mortgage; Limitations:** This Mortgage is an open-end mortgage, which secures existing indebtedness, "Future Advances" "Contingent Obligations" and "Protective Advances" as such terms are defined in 33 M.R.S.A. § 505. The maximum aggregate amount of all debts or obligations secured by this Mortgage, including Future Advances and Contingent Obligations, but excluding Protective Advances, shall not at any time exceed the total amount of \$120,000,000. The future advances secured hereby shall be made those advances made to or for the account of Mortgagor and may be made under the Credit Agreement and the Credit Documents, as the same may be amended, or may be made pursuant to promissory notes, line of credit agreements or other instruments evidencing such future advances which may be hereafter executed and delivered by Mortgagor to Mortgagee. In the event that any notice described in subsections 5(a) and 5(b) of 33 M.R.S.A. § 505 is recorded or is received by Mortgagee, any commitment, agreement or obligation to make future advances to or for the benefit of Mortgagor shall immediately cease.

21

(f) **Financing Statement:** This instrument constitutes a financing statement under Article 9-A of the Maine Uniform Commercial Code covering the

Building Equipment, fixtures, and the other items and types of collateral included within the Property and described in this Mortgage. For purposes of this Section 50(f), the debtor is Mortgagor and the secured party is the Mortgagee. The mailing address of the secured party (Mortgagee) from which information concerning the security interest may be obtained and the mailing address of the debtor (Mortgagor), are set forth below:

Mortgagee:

JPMorgan Chase Bank, N.A., as Collateral Agent
111 East Wisconsin Ave., Floor 15
Milwaukee, WI 53202-4815
Attention: Michael A. Hintz, Account Executive — ABL

Mortgagor:

Douglas Dynamics, L.L.C.
7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President

(g) The employer identification number of Mortgagor is 42-1623692. The organization identification number of Mortgagor is 3781861.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed under seal as of the day and year first above written.

Mortgagor:

DOUGLAS DYNAMICS, L.L.C.

By: _____

Name:

Title:

STATE OF _____
COUNTY OF _____, ss

On May _____, 2007, personally appeared before me, the above named _____, as _____ of said Douglas Dynamics, L.L.C., and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of said limited liability company.

Notary Public

Typed or Printed Name:

Exhibit A

Description of the Land

LEGAL DESCRIPTION

PARCEL 1:

BEGINNING at a stake and stones on Thomaston Street and at the Northeast corner bound of land formerly of Webber; thence generally easterly by and along said Thomaston Street, sixty (60) feet to land now or formerly of Spicer; thence southerly and at a right angle by land of said Spicer ninety (90) feet to other land of Spicer; thence westerly by land of said Spicer, sixty (60) feet to land of said Webber; thence at a right angle by land of said Webber, ninety (90) feet to said Thomaston Street and place of beginning.

BEGINNING at a stake at land formerly of Thomas Glover Wheeler; thence running westerly along Thomaston Street sixty (60) feet to a stake; thence running South ninety (90) feet to a stake; thence running East sixty (60) feet to a stake; thence running North ninety (90) feet to the place of beginning.

BEGINNING at the Southeast corner of Parcel 1B, as described above; thence westerly one hundred seventy two (172) feet to a line fence and land now or formerly of Prentiss Webber; thence southerly one hundred two (102) feet, more or less, to land now or formerly of Forrest L. Hooper and Barbara M. Hooper; thence easterly one hundred seventy two (172) feet along line of said Hooper to a right of way; thence northerly one hundred two (102) feet, more or less, to the place of beginning. Together with a right of way in common with others on the easterly side of said lot on the road as now traveled.

FOR REFERENCE, see deed of Mary M. Taylor to Fisher Engineering, Inc. recorded in Book 1020, Page 233 of the Knox County Registry of Deeds; and Rockland Tax Map #62, Lot A 5. The premises conveyed is known as 170 Thomaston Street.

EXCEPTIONS:

a. An easement in favor of Central Maine Power Company to erect, maintain, repair, rebuild, operate and control electric transmission and distribution lines beginning at pole 32 112.1 and extending in a southwesterly direction one pole, which easement is recorded in Book 390, Page. 444 of the Knox County Registry of Deeds; and

b. An easement granted by Patricia C. Spicer to Victor R. and Mary E. Malmstrom dated 30 April 1969 and recorded that date in Book 489, Page 247 of said Registry of Deeds, The easement conveys the right to draw water from a well located on the subject property, and to maintain a pipeline underground for the purpose of transmitting water from the well to the adjoining Malmstrom property. The grantor assumed no responsibility for her operation or maintenance of the well but reserved the right to draw water from the well sharing equally In the available supply of water.

PARCEL 2:

BEGINNING on the westerly side of a roadway and at the Northeast corner of land of Grantor at a fence; thence westerly two hundred thirty two (232) feet to a line fence; thence North along said line fence one hundred fifty (150) feet to land formerly of Varnum E. Nickles and Helen Nickles; thence easterly in a straight line and said line running at right angles with said line fence two hundred thirty two (232) feet to a stake on the easterly side of said roadway; thence southerly along the easterly side of said roadway one hundred fifty (150) feet to a fence and place of beginning. Also granting a right of way on the easterly side of the above described lot over the road as now traveled.

BEGINNING at an iron post on the westerly side of Ingraham Right of Way; so called; thence in a generally southerly direction by and along property now or formerly owned by the City of Rockland, a distance of fifty (50) feet to a post; thence by and along this Grantor's line in a westerly direction a distance of one hundred ninety (190) feet to a post; thence northerly along said land of said Grantor's

25

EXHIBIT A— LEGAL DESCRIPTION

(Continued)

land a distance of fifty (50) feet to an iron post; thence easterly one hundred ninety (190) feet along land now or formerly of Hooper to place of beginning.

FOR REFERENCE, see deed of Forrest L. Hooper, Jr. and Barbara M. Hooper to Fisher Engineering, Inc. recorded in .Book 1028, Page 231 of the Knox County Registry of Deeds; and Rockland Tax Map #62, Lots A7 and A8. The property herein conveyed is known as 170 Thomaston Street (rear).

EXCEPTIONS:

a. Acknowledgment of Common Boundaries between Forrest L. Hooper, Jr. & Barbara H, Hooper and Douglas Dynamics, Inc. dated 28 March 1995 and recorded 12 May 1995 at Book 1915, Page 47 of the Knox County Registry of Deeds.

PARCEL 3:

BEGINNING at the westerly line of land of Fisher Engineering, Inc.; thence running along Thomaston Street easterly sixty (60) feet to a stake; thence southerly ninety (90) feet to a stake; thence running westerly sixty (60) feet to a stake; thence northerly ninety (90) feet to the place of beginning. Being the same premises conveyed to Prentiss Webber et ux. by Thomas Clover Wheeler by deed dated April 5, 1955, and recorded in the Knox County Registry of Deeds, Book 345., Page 78.

BEGINNING at the southeast corner of land of this Grantor, which land is situated at 170 Thomaston Street; thence westerly along the southerly side of said land sixty (60) feet- to land of Fisher Engineering, Inc.; thence southerly along land of Fisher Engineering, Inc, one hundred five (105) feet, more or less, to land now or formerly of Bernice Williams; thence easterly along land of Bernice Williams sixty (60) feet to a stake at other land of Varnum Nickles; thence northerly along said land of Nickles one hundred five (105) feet, more or less, to land of Avery and place of beginning. Being the same premises conveyed to Prentiss E. Webber and Ruth Webber by Varnum and Helen Nickles, dated August 2, 1962, and recorded in the Knox County Registry of Deeds, Book 403, Page 101.

BEGINNING at a stake on Thomaston Street at land of \this Grantor; thence running East sixty (60) feet to a stake and at land now or formerly of Howard F. Avery; thence running South by said Avf1ry land ninety (90) feet to a stake; thence running West along land now or formerly of Wheeler sixty (60) feet to a stake; thence running North along line of this Grantor ninety (90) feet to a stake and place of beginning. Being a portion of the premises conveyed to Prentiss E. Webber and Ruth Webber by Howard F. and Emma B. Avery by deed dated August 27, 1963, and recorded in the Knox Registry of Deeds, Book 423, Page 160.

BEGINNING at the easterly comer of property formerly of Dennison; thence one hundred (100) feet, more or less, parallel with Thomaston Street to the southwesterly comer of property of Fisher Engineering, Inc.; thence southerly two hundred (200) feet, more or less, to a corner of land of this grantor; thence one hundred (100) feet, more or less, in an easterly direction to the corner of a lot formerly of Dennison; thence northerly two hundred (200) feet, more or less, to the place of beginning.

COMMENCING at the easterly corner of the land of Grantor at land now or formerly of Hooper; thence southeasterly along the land of Hooper approximately one hundred forty (140) feet to other land of Hooper; thence southwesterly along the land of Hooper two hundred (200) feet to the land now or formerly of Fisher Engineering, Inc; thence northwesterly along land now or formerly of Fisher Engineering" Inc. one hundred forty (140) feet, more or less, to land of this Grantor; thence northeasterly along the land of Grantor approximately two hundred (200) feet to. the place of beginning.

26

EXHIBIT A— LEGAL DESCRIPTION

(Continued)

FOR REFERENCE, see deed of Oliver J. Dennison and Gloria J. Dennison to Fisher Engineering, Inc., recorded in Book 998, Page 121 of the Knox County Registry of Deeds; and Rockland Tax Map #62, Lot A 6. The property herein conveyed is also known as 248 Thomaston Stre

EXCEPTIONS:

a. An easement for the erection and maintenance of electric wires between poles 32 1/2 and 32 1/2.1 granted by A. L. Nickles to Central Maine Power Company dated 18 November 1955, recorded 11 January 1956 In Book 348, Page 417 of the Knox County Registry of Deeds.

b. An easement beginning at Pole 32 1/2.1 and extending southwesterly one pole to be numbered 32 1/2.2 on old Thomaston Road granted by V.E. and H.L. Nickles to Central Maine Power Company dated 6 June 1961, recorded 19 June 1961 in Book 390, Page 444 of said Registry of Deeds;

c. Easements from Homer Gilbert to Central Maine Power Company recorded in Book 348, Page 79 and in Book 686, Page 82 of said Registry of Deeds, which mayor may not affect the subject property; and

d. "Certain pole rights granted to Central Maine Power" (not more specifically Identified) referred to In the warranty deed of Benjamin H. Nickles to E. B. Bodman recorded 30 September 1946 In Book 293, Page 69 of said Registry of Deeds.

PARCEL 4:

BEGINNING at a granite monument at the southeasterly corner of this Grantor, Fisher Engineering, Inc., as recorded in the Knox County Registry of Deeds, Book 970, Page 3; thence North 9 degrees 55 minutes 48 seconds East by land of Grantor a distance of 464.72 feet to a granite monument; thence South 85 degrees 12 minutes 20 seconds West a distance of 33.98 feet to a granite monument; thence North 9 degrees 07 minutes 30 seconds East still by land of Grantor a distance of 291.98 feet to a granite monument; thence North 23 degrees 08 minutes 18 seconds East still by land of Grantor and land now or formerly of Barbara M. and Forrest L. Hooper, Jr., as 'recorded in the Knox County Registry of Deeds, Book 616, Page 246 a distance of 213.10 feet to an iron rod placed, said iron rod being North 23 degrees 08 minutes 18 seconds East a distance of 35.38 feet from a granite monument at the southeasterly corner of said Hooper property; thence South S5 degrees 37 minutes 12 seconds East by land of this Grantor a distance of 267.17 feet to an iron rod in the northerly line of Gordon Drive; thence South 84 degrees 22 minutes 48 seconds West by the northerly line of Gordon Drive a distance of 65 feet to an iron rod placed at the end of Gordon Drive; thence South 5 degrees 37 minutes 12 seconds East by the end of Gordon Drive a distance of 50 feet to an iron rod placed; thence continuing the same course South 5 degrees 37 minutes 12 seconds East by land of this Grantor a distance of 626.58 feet to an iron rod placed; thence South 82 degrees 38 minutes 55 seconds West still by land of this Grantor a distance of 1066.40 feet to an iron rod placed at the line of the State of Maine property; thence North 21 degrees 10 minutes 35 seconds East by said State of Maine property a distance of 20 feet to an iron rod; thence North 24 degrees 10 minutes 52 seconds East still by said State property a distance of 15 feet to an iron rod; thence North 82 degrees 31 minutes 02 seconds East by said State property a distance of 375 feet to a granite monument at the southwesterly corner of this Grantor; thence continuing the same course North 82 degrees 31 minutes 01 second East by land of this Grantor a distance of 472.35 feet to the place of beginning. Containing 3.018 acres.

All the courses described in the above description were deduced from an observed magnetic north in the field having a declination of 17 degrees 38 minutes 20 seconds West of true North as observed by solar observations in the field.

Also conveying any rights that this Grantor may have to that portion of the so called Ingraham Lane lying within the bounds of the above described lot.

27

EXHIBIT A — LEGAL DESCRIPTION
(Continued)

FOR REFERENCE, see deed of the Inhabitants of the City of Rockland to Fisher Engineering, Inc. recorded in Book 991, Page 56 of the Knox County Registry of Deeds; and Plan of Industrial Park recorded In Cabinet 5, Sheet 129 of the Knox County Registry of Deeds.

EXCEPTIONS:

- a. A twenty foot right of way for the benefit of owners of the W.E. Ingraham Lot and other adjoining owners to Main Street, as referenced in deed of Lawrence and Portland Cement Company to Gross, recorded in Book 282, Page 63 of said Registry of Deeds; and
- b. An easement in favor of the City of Rockland for utilities and drainage with the right to construct and maintain drainage ditches on a strip of and fifteen feet wide adjacent to the line of Gordon Drive, as recorded at Book 991, Page 56 of said Registry of Deeds.

PARCEL 5:

BEGINNING at a cement monument on the southerly side of Thomaston Street, so called, at land conveyed by Homer K. Gilbert to the State of Maine by deed recorded in the Knox County Registry of Deeds, Book 786, Page 70; thence South 15 degrees 46 minutes 09 seconds East and by said land of State of Maine, 307.24 feet to a 51B inch iron rod; thence North 82 degrees 00 minutes 23 seconds East and still by said land of State of Maine, 400 feet to a corner; thence South 00 degrees 37 minutes 22 seconds West, 1000 feet to a corner of land of the City of Rockland as noted in the Knox County Registry of Deeds, Book 740, Page 212; thence North 82 degrees 31 minutes 01 seconds East and by said land of the City of Rockland, 472.35 feet to a granite monument; thence North 09 degrees 55 minutes 48 seconds East and by land of the City of Rockland as noted in the Knox County Registry of Deeds, Book 514, Page 262, 464.72 foot to a granite monument; thence South B5degrees 12 minutes 20 seconds West and still by said land of the City of Rockland, 33.98 feet to corner; thence North 09 degrees 07 minutes 30 seconds East and still by said land of the City of Rockland, 291.98 feet to a corner; thence North 23 degrees 08 minutes 18 seconds East 177.92 feet; thence South 84 degrees 27 minutes 40 seconds West and by property noted in the Knox County Registry of Deeds, Book 616, Page 246, 190 feet to a corner; thence North 23 degrees 08 minutes 18 seconds East, 50 feet to an iron rod; thence South 84 degrees 27 minutes 40 seconds West, 93.78 feet to a corner; thence North 05 degrees 21 minutes 29 seconds West, 337.92 feet to the southerly side of Thomaston Street, said point being the northwesterly corner of land now or formerly of Dennison as noted in the Knox County Registry of Deeds, Book 604, Page 117; thence South 84 degrees 05 minutes 21 seconds West by the southerly side of Thomaston Street, 809.51 feet to the place of beginning. Containing approximately 16.982 acres.

FOR REFERENCE, see deed of Homer K. Gilbert to Fisher Engineering, Inc. recorded in Book 970, Page 03 of the Knox County Registry of Deeds; and Plan showing property being conveyed to Fisher Engineering, Inc. by Homer K. Gilbert dated July 1984 by Frederick E. Beal.

EXCEPTIONS:

- a. Guying rights conveyed by Homer Gilbert to Central Maine Power Company in deed dated 10 June 1955, recorded 21 September 1955 in Book 348, Page 79 of said Registry of Deeds;
- b. A right of way to the State of Maine Over the subject property from Thomaston Street, for the passage of men, vehicles and equipment, as described in the deed of Gilbert dated 4 June 1971, recorded 11 June 1971 in Book 517, Page 77 of said Registry of Deeds. This right of way may not affect the subject property.

28

Exhibit B

Existing Liens

1. All those exceptions to title set forth on Exhibit B to Loan Policy No. M-5847(A) issued by Lawyers Title Insurance Corporation.
2. Those liens and security interests granted in favor of the Term Collateral Agent disclosed by the Intercreditor Agreement.

29

**MORTGAGE, ASSIGNMENT OF LEASES,
RENTS AND PROFITS AND SECURITY AGREEMENT**

DOUGLAS DYNAMICS, L.L.C.

Mortgagor

to

JPMORGAN CHASE BANK, N.A.

in its capacity as Collateral Agent for the Secured Parties
111 East Wisconsin Ave., Floor 15
Milwaukee, WI 53202-4815

Mortgagee

DATED: As of May 21, 2007

Premises located in:
Milwaukee, Wisconsin

Record and Return to:
Skadden Arps Slate Meagher & Flom LLP
300 South Grand Avenue
Los Angeles, California 90071
Attn: Eric Lee, Esq.

INDEX

	<u>Page No.</u>
1. Payment of Obligations and Performance of Covenants and Agreements	6
2. Title to Property	6
3. Intercreditor Agreement	7
4. Future Advances	7
5. Insurance	7
6. Impositions	7
7. Maintenance and Alterations	8
8. Leasing	8
9. Recording, Filing and Other Fees	9
10. Taxes Imposed on Mortgagee and the Secured Parties	9
11. Compliance with Laws, etc.	9
12. Inspection	9
13. Certificate of Mortgagor	9
14. Condemnation	10
15. Restoration	10
16. Default	11
17. Mortgagee's Right to Perform Mortgagor's Covenants	11
18. Contemporaneous Mortgages	11
19. Appointment of Receiver	11
20. Power of Sale	12
21. Judicial Foreclosure	12
22. Sale in Parcels	12
23. Notice Upon Acceleration	12
24. Possession of Premises	13
25. Expenses of Mortgagee and/or the Secured Parties	13
26. Mortgagor's Waivers	13
27. Partial Foreclosure	14
28. No Waiver; Rights Cumulative	14
29. Attorneys' Fees	14
30. Interest After Maturity	14
31. No Credit for Taxes	14
32. Liens	15
33. Change in Taxation	15
34. Assignment of Leases and Rents	16
35. Security Agreement	17
36. No Release	17
37. Notices	17
38. Severability	18
39. Intentionally Deleted	18
40. Indemnification Against Liabilities	18
41. No Oral Changes	19
42. Governing Law	19

43.	Construction	19
44.	Headings	19
45.	After Acquired Property	19
46.	Further Assurances	19
47.	Definitions	20
48.	Successors and Assigns	20
49.	Credit Agreement	20
50.	WAIVER OF JURY TRIAL	20
Exhibit A	Description of the Land	
Exhibit B	Existing Liens	

**MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND PROFITS
AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND PROFITS AND SECURITY AGREEMENT(this “**Mortgage**”) made as of this 21st day of May, 2007 by **DOUGLAS DYNAMICS, L.L.C.**, a Delaware limited liability company having an office at 7777 North 73^d Street, Milwaukee, Wisconsin 53223 (the “**Mortgagor**”), to **JPMORGAN CHASE BANK, N.A.** (“**JPMorgan**”), as collateral agent (in such capacity, and together with its successors and assigns, the “**Mortgagee**”), having an office at 111 East Wisconsin Ave., Floor 15, Milwaukee, WI 53202-4815, Attention: Michael A. Hintz, Account Executive — ABL, for the Secured Parties (as such term and other capitalized terms used but not otherwise defined herein are defined in the Credit Agreement, defined below).

WITNESSETH:

WHEREAS, Mortgagor is the owner of the fee interest in those certain parcels of land lying and being situated in the City of Milwaukee, Milwaukee County, Wisconsin, as more particularly described in Exhibit A attached hereto;

WHEREAS, Mortgagor, Fisher, LLC, a Delaware limited liability company (“**Fisher**”) and Douglas Dynamics Finance Company, a Delaware corporation (“**DD Finance**”), as Borrowers, Douglas Dynamics Holdings, Inc., a Delaware corporation (“**Holdings**”), as Guarantor, the banks and financial institutions having Revolving Loan Commitments (as defined therein) 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, as sole bookrunner, sole lead arranger, syndication agent, documentation agent and administrative agent for the Lenders (“**ABL Administrative Agent**”), and JPMorgan, as collateral agent for the Lenders, have entered into 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, the “**Credit Agreement**”), pursuant to which Lenders have agreed to make, and Mortgagee has agreed to administer, certain credit facilities in an aggregate amount not to exceed \$60,000,000, which extensions of credit shall be used for the purposes permitted under the Credit Agreement, upon the terms and conditions contained in the Credit Agreement; and

WHEREAS, Mortgagor has agreed to execute and deliver to Mortgagee this Mortgage in order to better secure Mortgagor’s performance of Mortgagor’s obligations under the Credit Agreement and under any of the other Credit Documents;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, including Mortgagee’s entering into the Credit Agreement, the receipt and legal sufficiency of which are hereby expressly acknowledged by all parties, to secure the full and complete payment and performance of the Obligations, including Mortgagor’s performance of Mortgagor’s

obligations pursuant to the Credit Agreement, this Mortgage and the other Credit Documents, Mortgagor and Mortgagee hereby agree as follows:

Mortgagor does hereby grant, pledge, mortgage, warrant, sell, transfer, assign, and convey unto Mortgagee subject only to the Permitted Liens and Existing Liens (defined below), all of its right, title and interest in the following (collectively, the “**Property**”):

- A. All that certain land located in the City of Milwaukee, Milwaukee County, Wisconsin, and more particularly described in Exhibit A annexed hereto and made a part hereof (collectively, the “**Land**”).
- B. All the buildings, structures and improvements, now or at any time hereafter erected on the Land or any part thereof (collectively, the “**Buildings**”).
- C. All machinery, apparatus, equipment, personal property and fixtures of every kind and nature whatsoever now or hereafter located in, on or about any one or more of the Buildings or upon the Land, or attached to or used or useable in connection with the operation or maintenance of the Land or any one or more of the Buildings, or any part thereof, and now owned or hereafter acquired (collectively, the “**Building Equipment**”; the Land, the Buildings and the Building Equipment being hereafter sometimes collectively referred to as the “**Premises**”).
- D. All right, title and interest of Mortgagor, whether now owned or hereafter acquired, in and to any opened or proposed avenues, streets, roads, public places, sidewalks, alleys, strips or gores of land, in front of or adjoining the Land or any one or more of the Buildings and all easements, tenements, hereditament, appurtenances, rights and rights of way, public or private, pertaining or belonging to the Land or any one or more of the Buildings.
- E. All insurance proceeds and all awards and payments, subject to applicable provisions of this Mortgage, including interest thereon, and the right to receive the same, which may be made in respect of all or any part of any of the Premises or any estate or interest therein or appurtenant thereto, as a result of damage to or destruction of all or any part of any of the Premises, the exercise of the right of condemnation or eminent domain, the closing of, or the alteration of the grade of, any street on or adjoining the Land, or any other injury to or decrease in the value of all or any part of any of the Premises.
- F. All right, title and interest of Mortgagor in and to any and all present and future Leases (as defined in Paragraph 47) of all or any part of the Premises, and in and to the rents, issues and profits payable thereunder and cash or securities deposited thereunder as lessees’ security deposits.
- G. All franchises, permits, licenses and rights therein respecting the use, occupation and operation of the Premises or the activities conducted thereon or therein.
- H. All right, title and interest of Mortgagor in and to any minerals, oil or gas located on, under or appurtenant to the Land.

I. All right, title and interest of Mortgagor in and to any tax refunds with respect to the Premises.

J. To the extent assignable, all of Mortgagor's interest in and to all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of the Premises and all right, title and interest of Mortgagor therein (collectively, the "**Contracts**").

K. All of Mortgagor's interest in and to all easements, rights, licenses, privileges and appurtenances including, without limitation, development and air rights now or hereafter belonging or in any way appertaining to the Land.

L. All of the estate and rights of Mortgagor now or hereafter acquired in and to land lying in streets, roads, ways and alleys, open or proposed, adjoining or contiguous to the Land.

M. The rents, issues and profits of any of the foregoing.

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns, forever. Provided, that if (i) Mortgagor shall perform all obligations hereunder and (ii) the Obligations are paid in full, the Commitments are cancelled or terminated and all outstanding Letters of Credit are cancelled or have expired, then this Mortgage shall be released without warranty, at the cost and request of Mortgagor.

AND MORTGAGOR COVENANTS, REPRESENTS AND WARRANTS TO AND FOR THE BENEFIT OF MORTGAGEE AND THE SECURED PARTIES AS FOLLOWS:

1. Payment of Obligations and Performance of Covenants and Agreements Mortgagor shall pay or perform the Obligations when due in accordance with the provisions of the Credit Agreement, this Mortgage, and the other Credit Documents and perform the covenants and agreements of Mortgagor set forth in the Credit Documents.

2. Title to Property Mortgagor represents and warrants that (a) it owns good and marketable fee simple title to the Premises, (b) it has the good and unrestricted right, full power and lawful authority to make this Mortgage in accordance with the terms hereof, (c) Mortgagor has obtained any and all consents and approvals necessary or required for the making of this Mortgage, and the making of this Mortgage will not violate any contract or agreement to which Mortgagor is a party or by which the Property is bound, and (d) the Premises is free of all liens, encumbrances, adverse claims and other defects of title whatsoever except those items listed on Exhibit B annexed hereto and made a part hereof (collectively, the "**Existing Liens**") and Permitted Liens. Mortgagor does hereby and shall forever warrant and defend its title to and interest in the Property and the validity and priority of the lien of this Mortgage, subject to the Existing Liens and the Permitted Liens, to Mortgagee and the Secured Parties, their respective successors and assigns, against all claims and demands whatsoever of any Person or

Persons. As of the date hereof, there are no defenses or offsets to this Mortgage or to the Obligations.

3. Intercreditor Agreement Notwithstanding anything herein to the contrary, and regardless of the priority of recordation of this Mortgage, the lien and security interests granted to the Mortgagee pursuant to this Mortgage and the exercise of any right or remedy by such Mortgagee hereunder are subject to the provisions of that certain Intercreditor Agreement, dated as of May 21, 2007 (the "**Intercreditor Agreement**"), by and among Mortgagor, Fisher, DD Finance, Holdings, Beneficiary, ABL Administrative Agent, and Credit Suisse, Cayman Islands Branch, in its capacities as collateral agent (together with its successors and assigns from time to time in such capacity, the "**Term Collateral Agent**") and administrative agent under the Term Loan Documents (as defined therein). In the event of any conflict between the terms of the Intercreditor Agreement and this Mortgage, the terms of the Intercreditor Agreement shall govern.

4. Future Advances Without limiting the generality of any other provision hereof, or the terms and provisions of the Credit Agreement, the Obligations shall include, without limitation: (a) all existing indebtedness of Mortgagor to Mortgagee and/or any of the Secured Parties evidenced by any of the Credit Documents; (b) all future advances that may subsequently be made by Mortgagee and/or the Lenders as provided by any of the Credit Documents; and (c) all other indebtedness, if any, of Mortgagor to Mortgagee and/or any of the Secured Parties now due or to become due or hereafter contracted pursuant to any of the Credit Documents; provided that the maximum principal amount of all existing indebtedness, future advances, readvances of sums repaid and all other indebtedness secured hereby at any one time shall not exceed the total sum of \$120,000,000 (exclusive of interest thereon, attorneys' fees and costs, taxes, insurance premiums and all other obligations hereunder).

5. Insurance

(a) Mortgagor shall maintain in full force and effect with respect to the Premises the insurance as required by Section 5.5 of the Credit Agreement.

(b) In the event of a foreclosure of this Mortgage or other action or proceeding taken by Mortgagee pursuant to this Mortgage, the purchaser of the Premises shall succeed to all of the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance which Mortgagor is required to maintain under Paragraph 5(a) and to all proceeds of such insurance.

6. Impositions

(a) Mortgagor shall pay, not later than the final delinquency date thereof (and if payable in installments, not later than the installment final delinquency date), all real estate taxes, personal property taxes, assessments, water rates and sewer rents, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining

the Land, and any other amounts which could be or become a lien upon or against the Property or any part thereof (collectively, the "**Impositions**"); provided, no such Imposition 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. Notwithstanding the foregoing, Mortgagor shall promptly, and in any event on demand, pay such contested Imposition if at any time all or any part of the Property shall be in danger of being foreclosed, sold, forfeited, or otherwise lost or if such contest shall be discontinued. During the continuance of any Event of Default, upon demand by Mortgagee, Mortgagor will pay the whole of any assessment (an "**Assessment**") for local improvements which may be payable in installments, notwithstanding that such installments may not be due and payable at the time of such demand.

(b) Mortgagor shall, upon request of Mortgagee, deliver to Mortgagee, within twenty (20) days after the final delinquency date thereof of any Imposition or Assessment, receipts evidencing such payment or other proof of payment satisfactory to Mortgagee.

7. Maintenance and Alterations Mortgagor will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, the Premises and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

8. Leasing Mortgagor represents that there are no Leases now in effect. Mortgagor shall not enter into any Lease of all or any part of any of the Premises without in each instance obtaining Mortgagee's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Mortgagor shall deliver to Mortgagee a duplicate original of each Lease promptly after the execution thereof. At the option of Mortgagee, each Lease, and all renewals, replacements, extensions, and modifications thereof, and all rights of the tenant thereunder, shall be subject and subordinate to this Mortgage, and to each and every advance made or thereafter made hereunder or under the other Credit Documents and to all renewals, additions, amendments, supplements, modifications, consolidations, spreaders, replacements, and extensions of this Mortgage and shall contain provisions obligating the tenants thereunder to attorn to Mortgagee or any purchaser therefrom if Mortgagee or such purchaser succeeds to the interest of Mortgagor under such Lease. Mortgagor shall fully and promptly perform all of the obligations to be performed by the lessor under any and all Leases. Mortgagor shall enforce the performance and observance of each and every obligation to be performed or observed by the lessees under such Leases. Mortgagor shall give prompt notice to Mortgagee of (a) any notice received by Mortgagor of any default by the lessor under any Lease, (b) the commencement of any action or proceeding by any lessee the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable thereunder, (c) any notice of default given by Mortgagor to the lessee under any Lease, or (d) the interposition by any lessee of any defense or counterclaim in any action or proceeding brought by Mortgagee against such lessee; and Mortgagor will cause a copy of any process, pleading or notice received or served by

8

Mortgagor in reference to any such action, defense or claim to be promptly delivered to Mortgagee. Mortgagor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall not mingle such funds with other funds. Mortgagor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

9. Recording, Filing and Other Fees Mortgagor shall pay all recording and filing fees, all recording taxes, and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of this Mortgage and any other Credit Documents, and shall reimburse Mortgagee and each of the Secured Parties on demand for all costs and expenses of any kind incurred by Mortgagee or any of the Secured Parties in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements). Mortgagor will, at any time on request of Mortgagee, execute or cause to be executed financing statements, continuation statements, or the like, in respect of any Building Equipment. Mortgagor shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

10. Taxes Imposed on Mortgagee and the Secured Parties Mortgagor shall pay all taxes (except income, inheritance and franchise taxes, taxes on the receipt of debt service payments, or taxes in lieu of any of the foregoing) imposed on Mortgagee or any of the Secured Parties by reason of its ownership of this Mortgage or any of the other Credit Documents.

11. Compliance with Laws, etc. Mortgagor shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

12. Inspection Mortgagee and its authorized representatives shall have the right, at Mortgagee's option, at reasonable times during normal business hours and upon reasonable prior written notice, and as often as may be reasonably requested, to enter the Premises for the purpose of inspecting the same and any other Collateral.

13. Certificate of Mortgagor Mortgagor, upon request of Mortgagee or any of the Secured Parties, shall certify to Mortgagee or to such Secured Party or to any proposed assignee of or participant in this Mortgage, by an instrument in form reasonably satisfactory to Mortgagee or such Secured Party, duly acknowledged, the amount of the Obligations then owing, whether any offsets or defenses exist against payment or performance of all or any portion of the Obligations and anything else that Mortgagee or such Secured Party might reasonably request, within ten (10) days if the request is made personally, or within fifteen (15) days if the request is made by mail. Mortgagee, Secured Parties and any actual or proposed assignee of or participant in this Mortgage shall have the right to rely on such certification.

9

14. Condemnation

(a) Mortgagor shall give notice to Mortgagee upon Mortgagor receiving written notice of the commencement of any action or proceeding to take all or any part of the Premises by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Land. Mortgagee may participate in any such action or proceeding in the name of Mortgagee or, whenever necessary, in the name of Mortgagor, and Mortgagor shall deliver to Mortgagee such instruments as Mortgagee shall request to permit such participation. Mortgagor shall not settle any such action or proceeding or agree to accept any award or payment without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed), and such award or payment and any interest thereon (hereinafter collectively called the "Award") shall be applied in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement.

(b) The application of any Award toward payment of the Obligations shall not be deemed a waiver by Mortgagee or any of the Secured Parties of its right to receive payment of the balance of the Obligations in accordance with the provisions of the Credit Documents. Mortgagee shall have the right, but shall be under no obligation, to question the amount of the Award, and Mortgagee may accept the same without prejudice to the rights that Mortgagee may have to question such amount. In any such condemnation or eminent domain action or proceeding Mortgagee may be represented by attorneys selected by Mortgagee, and all sums paid by Mortgagee in connection with such action or proceeding (including, without limitation, reasonable attorneys' fees to the extent permitted by law) shall, on demand, be immediately due from Mortgagor to Mortgagee and the same shall be secured by this Mortgage.

(c) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, the unpaid principal portion of the Advances shall continue to bear interest at the rate payable pursuant to the applicable Credit Documents until the Award shall have been actually received by Mortgagee, and any reduction in the Obligations resulting from the application by Mortgagee of the Award shall be deemed to take effect only on the date of such receipt.

15. Restoration If the Buildings or the Building Equipment shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any taking in condemnation proceedings or the exercise of any right of eminent domain, Mortgagor shall promptly restore, replace or rebuild the same to as nearly as possible the value, quality and condition they were in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by Mortgagee which approval shall not be unreasonably withheld or delayed, or apply the amount of any Award or insurance proceeds received with respect thereto, in each case in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement. Mortgagor shall give prompt notice to Mortgagee of any damage or destruction to the Buildings or Building Equipment by fire or other casualty, as well as the initiation of any condemnation or eminent domain proceeding affecting the same.

10

16. Default

(a) Any Event of Default under the Credit Agreement shall constitute an Event of Default hereunder and Mortgagee shall have all of the rights of the Administrative Agent and Collateral Agent under the Credit Agreement and all of the remedies hereunder.

(b) All notice and cure periods provided in the Credit Agreement shall run concurrently with any notice and cure periods provided under applicable law.

17. Mortgagee's Right to Perform Mortgagor's Covenants If there shall be an Event of Default, Mortgagee may, at its option, cure such Event of Default, and Mortgagee and its representatives shall have the right to enter the Premises to do so, and the amounts advanced by, and the other costs and expenses of, Mortgagee in curing such Event of Default, with interest from the time of the advances or payments at the Base Rate plus the Applicable Margin, shall, on demand, be immediately due from Mortgagor to Mortgagee and shall be secured by this Mortgage.

18. Contemporaneous Mortgages THIS MORTGAGE IS MADE CONTEMPORANEOUSLY WITH TWO (2) OTHER MORTGAGES OR DEEDS OF TRUST OF EVEN DATE HEREWITH (as any of the same may be amended, supplemented, restated, severed, consolidated, spread, partially released, increased or otherwise modified from time to time, the "**Contemporaneous Mortgages**") GIVEN TO MORTGAGEE COVERING PROPERTY LOCATED IN THE STATES OF TENNESSEE AND MAINE. The Contemporaneous Mortgages secure the Obligations. Upon the occurrence of an Event of Default, Mortgagee may proceed under this Mortgage and/or the Contemporaneous Mortgages against any of such property and/or the Property in one or more parcels and in such manner and order as Mortgagee shall elect. Mortgagor hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, any right to have the property and/or the Property covered by the Contemporaneous Mortgages marshalled upon any foreclosure of this Mortgage or the Contemporaneous Mortgages.

19. Appointment of Receiver After the occurrence and during the continuance of an Event of Default, Mortgagee may apply for the appointment of a receiver of the Rents (as defined in Paragraph 47), issues, and profits of all or any part of the Property from whatever source derived and thereupon it is hereby expressly covenanted and agreed that the court shall forthwith appoint such receiver with the usual powers and duties of receivers in like cases; and said appointment shall be made by the court ex parte as a matter of strict right to Mortgagee, without notice to or demand upon Mortgagor or any Person claiming through or under Mortgagor, and Mortgagee shall be entitled to the appointment of such receiver as a matter of right, to the extent not prohibited by applicable law, without consideration of the value of the Property as security for the amounts due to Mortgagee or the Secured Parties or the solvency of any Person liable for the payment of such amounts. Mortgagor hereby specifically waives the right to object to the appointment of a receiver as aforesaid and hereby expressly consents that such appointment shall be made ex parte and without notice to Mortgagor as an

11

admitted equity and as a matter of absolute right to Mortgagee. In order to maintain and preserve the Property and to prevent waste and impairment of its security, Mortgagee may, at its option, advance monies to the appointed receiver and all such sums advanced shall become secured obligations and shall bear interest from the date of such advance at the rate of interest specified in Section 2.9 of the Credit Agreement.

20. Power of Sale To the extent permitted by the laws of the State of Wisconsin, Mortgagee is hereby granted a power of sale and may sell any of the Premises (together with the Rents and profits and intangible personalty), or such part or parts thereof or interests therein as Mortgagee may select.

21. Judicial Foreclosure After the occurrence and during the continuance of an Event of Default, Mortgagee may institute an action of foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement hereof and realization on the Property or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire principal then outstanding under the Credit Documents, with interest thereon at the rate stipulated in the Credit Documents to the date of default and thereafter at the default interest rate specified in Section 2.9 of the Credit Agreement together with all other sums secured by this Mortgage, all costs of suit, including, without limitation, the expenses which are described in Paragraphs 25 and 29, and interest at the default interest rate specified in Section 2.9 of the Credit Agreement on any judgment obtained by Mortgagee from and after the date of any judicial sale of any of the Property until actual payment. Upon any sale or sales made hereunder, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee and/or any of the Secured Parties may bid for and acquire any of the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Obligations the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. Except as otherwise provided in the Credit Agreement, the proceeds of such sale shall be applied first to the payment of the costs and charges of such sale, including, without limitation, Mortgagee's attorneys' fees, (to the extent permitted by law), and second to the payment of the Obligations, the surplus money, if any, to be paid to the Person(s) legally entitled thereto (including Mortgagor, to the extent so entitled, if at all). The obligation of Mortgagor to so execute and file such waiver shall survive the termination of this Mortgage. Following a foreclosure sale, the sheriff shall deliver to the purchaser the sheriff's deed (and bill of sale as to any personalty) conveying the property so sold without any covenant or warranty, express or implied.

22. Sale in Parcels In the event of a foreclosure of this Mortgage or upon any sale under this Mortgage pursuant to judicial proceedings or otherwise, the Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Mortgagee in its sole discretion may select.

23. Notice Upon Acceleration Whenever Mortgagee in this Mortgage is given the option to accelerate the maturity of all or part of the Obligations

12

upon the occurrence of an Event of Default, Mortgagee may, to the extent permitted by law, do so without prior notice or demand to or upon Mortgagor except as otherwise specifically provided herein.

24. Possession of Premises To the extent permitted by law, after the occurrence and during the continuance of an Event of Default, Mortgagee and its agents and any receiver appointed by a court are authorized to (a) take possession of the Premises, with or without legal action, and by force if necessary; (b) lease the Premises or make modifications to or cancel Leases; (c) maintain, repair, alter, and restore the Premises; (d) with or without taking possession, collect all Rents and profits payable under all Leases directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists under this Mortgage accompanied by a demand on such lessee for the payment to Mortgagee of all Rents due and to become due under its Lease, and Mortgagor FOR THE BENEFIT OF MORTGAGEE AND EACH SUCH LESSEE hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said Rents to Mortgagee without regard to the truth of Mortgagee's statement of an Event of Default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default such that the payment of rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the Lease for the payment of Rents by the lessee to Mortgagor; and (e) after deducting all costs of collection and administration expense, apply the net Rents and profits to the payment of Impositions, insurance premiums and all other carrying charges (including, without limitation, agents' compensation and fees and reasonable costs of counsel to the extent permitted by law, and receivers) and to the maintenance, repair or restoration of the Premises, or, except as otherwise provided in the Credit Agreement, on account and in reduction of the Obligations in such order and amounts as Mortgagee in Mortgagee's sole discretion may elect. Mortgagee shall be liable to

account only for Rents and profits actually received by Mortgagee.

25. Expenses of Mortgagee and/or the Secured Parties All sums (including reasonable attorneys' fees and disbursements, to the extent permitted by law) paid by Mortgagee and/or any of the Secured Parties in connection with any litigation to prosecute or defend the rights and obligations created by this Mortgage, with interest thereon at the default interest rate specified in Section 2.9 of the Credit Agreement from the time of payment by Mortgagee and/or any of the Secured Parties shall, on demand, be immediately due from Mortgagee to Mortgagee and/or any such Secured Party and shall be added to and included in the Obligations and shall be secured by this Mortgage.

26. Mortgagor's Waivers Mortgagor, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, (i) the benefit of any and all valuation and appraisal laws, (ii) any right of redemption whether statutory or otherwise, in respect of the Property, (iii) any applicable homestead or dower laws, (iv) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of court in the nature of any one or more of them, (v) any right to have any of the Property marshalled upon foreclosure of this Mortgage, (vi) the right to interpose any set-off, recoupment, counterclaim or cross-

13

claim in any litigation in any court with respect to, in connection with, or arising out of this Mortgage or any of the other Credit Documents unless such set-off, recoupment, counterclaim or cross-claim could not, by reason of the applicable Federal or State procedural laws, be interposed, pleaded or alleged in any other action, and (vii) any right Mortgagor may have to claim or recover in any litigation arising out of this Mortgage or any of the other Credit Documents any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages.

27. Partial Foreclosure Mortgagee may from time to time, if permitted by law, take action to recover any sums, whether interest, principal or any other sums, required to be paid under this Mortgage or any other Credit Document as the same become due, without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Mortgagor existing when such earlier action was commenced. Mortgagee may also foreclose this Mortgage for any sums due under this Mortgage or any other Credit Document and the lien of this Mortgage shall continue to secure the balance of the Obligations due.

28. No Waiver; Rights Cumulative No failure or delay on the part of Mortgagee or any of the Secured Parties 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 Mortgagee and each of the Secured Parties 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.

29. Attorneys' Fees If this Mortgage shall be foreclosed, or if any of the Credit Documents is placed in the hands of an attorney for collection or is collected through any court, including any bankruptcy court, there shall be included in the computation of the sums secured hereby, to the extent permitted by law, the amount of a reasonable fee for the services of the attorney retained by Mortgagee in the foreclosure action or proceeding, and all disbursements, costs, allowances and additional allowances provided by law.

30. Interest After Maturity The Obligations secured by this Mortgage shall bear interest from and after maturity, whether or not resulting from acceleration, at the default interest rate specified in Section 2.9 of the Credit Agreement, but this shall not constitute an extension of time for payment of the Obligations.

31. No Credit for Taxes Mortgagor shall not claim or demand or be entitled to any credit or credits on account of any of the sums secured hereby by reason of the Impositions assessed against all or any part of the Property or for any payments made

14

on account thereof. No deductions shall be made or claimed from the taxable value of all or any part of the Premises by reason of this Mortgage.

32. Liens This Mortgage is and shall be maintained as a valid first lien on the Property subject only to any encumbrances created pursuant to the Credit Documents and the Existing Liens and the Permitted Liens, if any. Notwithstanding any provision in the Credit Documents to the contrary, Mortgagor shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the Rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien"), whether senior or junior in lien to this Mortgage, other than the lien of (i) this Mortgage and (ii) the Permitted Liens (including 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; provided, however, that Mortgagor shall give Mortgagee at least twenty (20) days prior written notice of any Permitted Lien described in the parenthetical to clause (ii) above which is to be created after the date hereof together with a reasonably detailed description thereof; and provided, further, that nothing contained in this Paragraph shall require Mortgagee to pay any real estate taxes or other Impositions prior to the time when same are required to be paid under this Mortgage. Mortgagor will keep and maintain all of the Premises free from all liens of Persons supplying labor or materials relating to the construction, alteration, modification or repair of the Premises. If any such lien shall be filed against any of the Property, Mortgagor agrees to discharge the same of record (by payment, bonding or otherwise) within 10 days of notice of the filing thereof. No financing statement, conditional bill of sale or chattel mortgage shall be made or filed against any Building Equipment without the prior consent of Mortgagee and if at any time there should be any (with or without the consent of Mortgagee), then upon the occurrence and during the continuance of an Event of Default, all right, title and interest of Mortgagor in and to all deposits and payments made thereon are hereby assigned to Mortgagee.

33. Change in Taxation In the event of the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (a) deducting or allowing Mortgagor to deduct from the value of the Property for the purpose of taxation any lien or security interest thereon, (b) imposing, modifying or deeming applicable any reserve or special requirement against deposits in or for the account of, or loans by, or other liabilities of, or other assets held by Mortgagee or any of the Secured Parties, or (c) subjecting Mortgagee or any of the Secured Parties to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Mortgage, the Obligations, Mortgagee or any of the Secured Parties, and the result is to increase the taxes imposed upon or the cost to Mortgagee or any of the Secured Parties of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder or under the other Credit Documents, then, and in any such event, Mortgagor shall, on demand, pay to Mortgagee for the account of Mortgagee or any of the Secured Parties, as the case may be, such additional amounts as may be required to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be

15

unlawful or would constitute usury under applicable law, then Mortgagee may, at its option, require Mortgagor to make a partial repayment of the Obligations in an amount

equal to the then value of the Premises.

34. Assignment of Leases and Rents Mortgagee absolutely and unconditionally assigns to Mortgagee the Rents, issues and profits of the Premises as further security for the payment of the Obligations and Mortgagee grants to Mortgagee during the existence of an Event of Default the right to enter the Premises for the purpose of collecting the same and to let the Premises, or any part thereof, and, except as otherwise provided in the Credit Agreement, to apply said Rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the payment in full of the Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit. Mortgagee hereby waives the right to enter the Premises for the purpose of collecting said Rents, issues and profits, and Mortgagee shall be entitled to collect, receive and use said Rents, issues and profits, until the occurrence and during the continuance of and Event of Default. During the continuance of any Event of Default, the right of Mortgagee to collect, receive and use said Rents, issues and profits, shall be revoked forthwith. Further, from and after delivery of written notice of such revocation, constructive possession of the Premises shall be vested in Mortgagee, and this assignment shall be activated and perfected. Notwithstanding the foregoing, this assignment shall also be activated and perfected upon Mortgagee's exercising, upon the occurrence and during the continuance of an Event of Default, any of the following remedies pursuant to this Mortgage: (i) taking actual possession of the Premises; (ii) moving or applying for the appointment of a receiver; (iii) filing or commencing an action to foreclose this Mortgage; or (iv) collecting the Rents directly from the tenant(s). Mortgagee shall, from time to time after request by Mortgagee, execute, acknowledge and deliver to Mortgagee, in form reasonably satisfactory to Mortgagee, separate assignments effectuating the foregoing. Neither Mortgagee nor the Secured Parties shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagee under any Lease or other agreement affecting all or any part of the Premises, and Mortgagee hereby agrees to indemnify Mortgagee and the Secured Parties for and hold them harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Premises upon Mortgagee or the Secured Parties, nor make Mortgagee or the other Secured Parties liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Premises resulting in injury, death or property damage. In addition, after the occurrence and during the continuance of an Event of Default and following the giving of notice to Mortgagee, Mortgagee will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said Rents, issues and profits, the fair and reasonable rental value for the use and occupancy of the Premises or of such part thereof as may be in the possession of Mortgagee, and upon default in any such payment will vacate and surrender the possession thereof to Mortgagee or to such receiver, and in default thereof may be evicted by summary or other proceedings.

16

35. Security Agreement It is the intention of the parties hereto that this instrument shall constitute a Security Agreement and a Financing Statement within the meaning of the Uniform Commercial Code as enacted in the state in which the Land is located with respect to the personalty and fixtures comprising a part of the Property, and that a security interest shall attach thereto for the benefit of Mortgagee, as secured party, to further secure the Obligations. Mortgagee hereby authorizes Mortgagee to file financing and continuation statements with respect to such collateral in which Mortgagee has a mortgageable interest, without the signature of Mortgagee whenever lawful, and upon request, Mortgagee shall promptly execute financing and continuation statements in form satisfactory to Mortgagee to further evidence and secure Mortgagee's interest in such collateral, and shall pay all filing fees in connection therewith. In the event of the occurrence and during the continuance of an Event of Default, Mortgagee, pursuant to the applicable provision of the Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that in the event Mortgagee elects to proceed with respect to collateral constituting personalty or fixtures separately from the real property, without demand, notice or advertisement whatsoever except that where an applicable statute requires reasonable notice of sale or the dispositions, the giving of ten (10) days' notice by Mortgagee to Mortgagee, shall be deemed to be reasonable notice thereof and Mortgagee waives any other notice with respect thereto.

36. No Release Neither Mortgagee nor any other Person now or hereafter obligated for the payment or performance of all or any portion of the Obligations shall be released from paying such Obligations and the lien of this Mortgage shall not be affected by reason of (a) the failure of Mortgagee or any of the Secured Parties to comply with any request of Mortgagee, or of any other Person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any of the covenants and agreements of Mortgagee under the Credit Documents, (b) the release, regardless of consideration, of the whole or any part of the security held for the Obligations, (c) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or performance of all or any portion of the Obligations, or (d) any agreement or stipulation extending the time of payment or modifying the terms of any of the Credit Documents, and in the event of such agreement or stipulation, Mortgagee and all such other Persons shall continue to be liable under the Credit Documents, as amended by such agreement or stipulation, unless expressly released and discharged in writing by Mortgagee and the Secured Parties.

37. Notices All notices, consents and other communications provided for herein shall be sent to such Person's address as follows (or to such other address indicated in an unrevoked written notice from such Person given in accordance the terms of this Paragraph):

(a) if to Mortgagee, Douglas Dynamics, L.L.C., 7777 North 73rd Street, Milwaukee, WI 53223, Attention: Chief Executive Officer and President, Teletype No.: (414) 354-8448, with a copy to Aurora Capital Group, 10877 Wilshire Boulevard, Suite

17

2100, Los Angeles, CA 90024, Attention: Secretary, Douglas Dynamics Holdings, Inc., Teletype No.: (310) 824-2791, with a copy to Gibson, Dunn & Crutcher LLP, 333 S. Grand Avenue, Los Angeles, CA 90071, Attention: Jeff R. Hudson, Esq., Teletype No.: 213-229-6332; and

(b) if to Mortgagee or Collateral Agent, at JPMorgan Chase Bank, N.A., 111 East Wisconsin Ave., Floor 15, Milwaukee, WI 53202-4815, Attention: Attention: Michael A. Hintz, Account Executive — ABL, Teletype No.: 414-977-6666, with a copy to Skadden Arps Slate Meagher & Flom LLP, 333 West Wacker Drive, Suite 2100, Chicago, IL 60606, Attention: Seth E. Jacobson, Esq., Teletype No.: (312) 407-0411; and

(c) if to any of the Secured Parties, at the address set forth below such Secured Party's name on the signature pages of the Credit Agreement.

Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, 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 Mortgagee shall be effective until received by Mortgagee.

38. Severability In case any provision in or obligation hereunder 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.

39. Intentionally Deleted

40. Indemnification Against Liabilities Mortgagee will defend, indemnify, pay and hold harmless Mortgagee and the Secured Parties and their respective officers, partners, directors, trustees, employees, agents and Affiliates of Mortgagee and each of the Secured Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee and any of the Secured Parties by reason of (a) ownership of a mortgagee's or participating lender's interest in the Property, (b) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, unless due to the willful misconduct of Mortgagee or such Secured Party, (c) any use, nonuse or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Mortgagee to perform or comply with any of the terms of this Mortgage, (e) performance of any labor or services or the furnishing of any materials or

lessees, licensees or invitees, or (g) any work in connection with any alterations, changes, new construction or demolition of the Premises. All amounts payable to Mortgagee and the Secured Parties under this Paragraph shall be payable promptly on demand and shall be deemed indebtedness and Obligations secured by this Mortgage and any such amounts shall bear interest at the default interest rate specified in Section 2.9 of the Credit Agreement from the date of such demand. In case any action, suit or proceeding is brought against Mortgagor, Mortgagee and/or any of the Secured Parties by reason of any such occurrence, Mortgagor, upon request of Mortgagee or any of the Secured Parties will, at Mortgagor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Mortgagee or such Secured Party and approved by Mortgagor.

41. No Oral Changes This Mortgage and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

42. Governing Law THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS MORTGAGE AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPALS THEREOF.

43. Construction This Mortgage shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

44. Headings Paragraph 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.

45. After Acquired Property All property of every kind which is hereafter acquired by Mortgagor which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further giving of a deed of trust and/or mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage.

46. Further Assurances Mortgagor shall execute, acknowledge and deliver to Mortgagee any documents and instruments which Mortgagee may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting of Mortgagee's security and rights under this Mortgage, in form and substance reasonably satisfactory to Mortgagee.

47. Definitions The following terms shall, for all purposes of this Mortgage, have the respective meanings herein specified unless the context otherwise requires and such meanings shall apply equally to the singular and plural forms of such defined terms unless a definition is provided herein for both the singular and plural form of such defined term:

(a) **"Lease"** shall mean every lease or occupancy agreement for the use or hire of all or any portion of the Premises, which shall be in effect at the date hereof or which shall hereafter be entered into by or on behalf of Mortgagor.

(b) **"Rents"** shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Land and the Building, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property, and proceeds, if any, from business interruption or other loss of income insurance.

48. Successors and Assigns The terms, covenants and provisions of this Mortgage shall apply to and be binding upon Mortgagor and the successors and assigns of Mortgagor and shall inure to the benefit of Mortgagee, the Secured Parties and their respective successors and assigns. All grants, covenants, terms, provisions, and conditions contained herein shall run with the Land.

49. Credit Agreement In the event of any inconsistency or conflict between the terms and provisions of the Credit Agreement and this Mortgage, the terms and provisions of the Credit Agreement shall control.

50. WAIVER OF JURY TRIAL MORTGAGOR AND MORTGAGEE HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MORTGAGE AND ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS MORTGAGE, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR FUTURE DEALINGS. MORTGAGOR AND MORTGAGEE REPRESENT AND WARRANT THAT EACH HAS HAD AN OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed under seal as of the day and year first above written.

Mortgagor:

DOUGLAS DYNAMICS, L.L.C.

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF)
)ss.
COUNTY OF)

Personally came before me this _____ day of May, 2007 the above named _____, the _____ of Douglas Dynamics, L.L.C. to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

*
Notary Public, State of _____
My Commission expires: _____)

* Names of persons signing in any capacity must be typed or printed below their signature.

Exhibit A

Description of the Land

A parcel of land in the Northwest One-quarter (1/4) of Section Fifteen (15), Township Eight (8) North, Range Twenty-one (21) East, in the City of Milwaukee, Milwaukee County, Wisconsin, more particularly described as follows: Commencing at the Southwest corner of said 1/4 Section; running thence North along the West line of said 1/4 Section, 1328.24 feet to a point in the extended center line of a 20 foot sewer easement; thence North 88°54'49" East along said center line of the 20 foot sewer easement and its extension, 468:61 feet to the point of beginning of the land to be described; thence South 0°01'16" East, 1055.57 feet to a point; thence North 88°57'47" East, 408.99 feet to a point in the present West line of North 73rd Street; thence North 0°02'25" West along the said present West line of North 73rd Street, 1055.90 feet to a point; thence South 88°54'49" West along the center line of a 20 foot sewer easement, 408.60 feet to the point of beginning.

Schedule B

Existing Liens

1. All those exceptions to title set forth on Schedule B to Loan Policy No. 440270M issued by Lawyers Title Insurance Corporation.
2. Those liens and security interests granted in favor of the Term Collateral Agent disclosed by the Intercreditor Agreement.

THIS INSTRUMENT WAS DRAFTED BY:

Kevin Oliver, Esq.
Skadden, Arps, Slate, Meagher, & Flom LLP
300 South Grand Avenue
Los Angeles, California 90071

Maximum principal indebtedness for
Tennessee Recording Tax purposes
is \$7,000,000.

**DEED OF TRUST, ASSIGNMENT OF LEASES,
RENTS AND PROFITS AND SECURITY AGREEMENT**

DOUGLAS DYNAMICS, L.L.C.

Grantor

to

**FREDERIC H. BRANDT, ESQ.,
a resident of Washington County, Tennessee**

Trustee

for the benefit of

JPMORGAN CHASE BANK, N.A.
in its capacity as Collateral Agent for the Secured Parties
111 East Wisconsin Ave., Floor 15
Milwaukee, WI 53202-4815

Beneficiary

DATED: As of May 21, 2007

Premises located in:
Washington County, Johnson City, Tennessee

Record and Return to:
Skadden Arps Slate Meagher & Flom LLP
300 South Grand Avenue
Los Angeles, California 90071
Attn: Eric Lee, Esq.

INDEX

	<u>Page No.</u>
1. Payment of Obligations and Performance of Covenants and Agreements	7
2. Title to Property	7
3. Intercreditor Agreement	7
4. Future Advances	8
5. Insurance	8
6. Impositions	8
7. Maintenance and Alterations	9
8. Leasing	9
9. Recording, Filing and Other Fees	9
10. Taxes Imposed on Beneficiary and the Secured Parties	10
11. Compliance with Laws, etc.	10
12. Inspection	10
13. Certificate of Grantor	10
14. Condemnation	10
15. Restoration	11
16. Default	11
17. Beneficiary's Right to Perform Grantor's Covenants	11
18. Contemporaneous Mortgages	12
19. Appointment of Attorney-in-Fact	12
20. Power of Sale	13
21. Application of Proceeds of Foreclosure and Other Remedies	14
22. Waiver of Redemption Rights	14
23. Judicial Foreclosure	14
24. Sale in Parcels	15
25. Notice Upon Acceleration	15
26. Possession of Premises	15
27. Expenses of Beneficiary and/or the Secured Parties	16
28. Grantor's Waivers	16
29. Partial Foreclosure	17
30. No Waiver; Rights Cumulative	17
31. Attorneys' Fees	17
32. Interest After Maturity	17
33. No Credit for Taxes	17
34. Liens	17
35. Change in Taxation	18
36. Assignment of Leases and Rents	18
37. Security Agreement	19
38. No Release	20
39. Notices	20
40. Severability	21
41. Intentionally Deleted	21
42. Indemnification Against Liabilities	21
<hr/>	
43. No Oral Changes	22
44. Governing Law	22
45. Construction	22

46.	Headings	22
47.	After Acquired Property	22
48.	Further Assurances	22
49.	Definitions	22
50.	Successors and Assigns	23
51.	Credit Agreement	23
52.	Trustee	23

Exhibit A	Description of the Land
Exhibit B	Existing Liens

**DEED OF TRUST, ASSIGNMENT OF LEASES, RENTS AND PROFITS
AND SECURITY AGREEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES, RENTS AND PROFITS AND SECURITY AGREEMENT(this “**Deed of Trust**”) made as of this 21st day of May, 2007 by **DOUGLAS DYNAMICS, L.L.C.** (formerly known as New DD, LLC), a Delaware limited liability company having an office at 7777 North 73rd Street, Milwaukee, Wisconsin 53223 (the “**Grantor**”), to **FREDERIC H. BRANDT**, a resident of Washington County, Tennessee, whose address is c/o Brandt and Beeson, P.C., 206 Princeton Road, Suite 25, Johnson City, TN 37601 (including any successor trustee at the time of acting as such hereunder, the “**Trustee**”), for the benefit of **JPMORGAN CHASE BANK, N.A.** (“**JPMorgan**”), as collateral agent (in such capacity, and together with its successors and assigns, the “**Beneficiary**”), having an office at 111 East Wisconsin Ave., Floor 15, Milwaukee, WI 53202-4815, Attention: Michael A. Hintz, Account Executive — ABL, for the Secured Parties (as such term and other capitalized terms used but not otherwise defined herein are defined in the Credit Agreement, defined below).

THIS INSTRUMENT COVERS PROPERTY WHICH IS OR MAY BECOME SO AFFIXED TO THE REAL PROPERTY AS TO BECOME FIXTURES AND ALSO CONSTITUTES A UCC FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER § 47-9-502 OF TENNESSEE CODE ANNOTATED.

GRANTOR IS THE RECORD OWNER OF THE PROPERTY DESCRIBED IN EXHIBIT A.

THE BENEFICIARY EXPRESSLY OBJECTS TO THE PRIORITY OF ANY MECHANICS’ OR MATERIALMEN’S LIENS IMPOSED SUBSEQUENT TO THE DATE OF THE RECORDATION OF THIS DEED OF TRUST AS SUCH PRIORITY WOULD OTHERWISE BE ALLOWED PURSUANT TO THE TERMS OF T.C.A. § 66-11-108.

NOTICE PURSUANT TO § 47-28-104 OF TENNESSEE CODE ANNOTATED: THIS DEED OF TRUST SECURES FUTURE ADVANCES WHICH ARE “OBLIGATORY ADVANCES” WITHIN THE MEANING OF THE AFORESAID STATUTE. THIS DEED OF TRUST IS FOR “COMMERCIAL PURPOSES WITHIN THE MEANING OF SAID STATUTE.

WITNESSETH:

WHEREAS, Grantor is the owner of the fee interest in those certain parcels of land lying and being situated in Washington County, Tennessee, as more particularly described in Exhibit A attached hereto;

WHEREAS, Grantor, Fisher, LLC, a Delaware limited liability company (“**Fisher**”) and Douglas Dynamics Finance Company, a Delaware corporation (“**DD Finance**”), as Borrowers, Douglas Dynamics Holdings, Inc., a Delaware corporation

(“**Holdings**”), as Guarantor, the banks and financial institutions having Revolving Loan Commitments (as defined therein) 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, as sole bookrunner, sole lead arranger, syndication agent, documentation agent and administrative agent for the Lenders (“**ABL Administrative Agent**”), and JPMorgan, as collateral agent for the Lenders, have entered into 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, the “**Credit Agreement**”), pursuant to which Lenders have agreed to make, and Beneficiary has agreed to administer, certain credit facilities in an aggregate amount not to exceed \$60,000,000, which extensions of credit shall be used for the purposes permitted under the Credit Agreement, upon the terms and conditions contained in the Credit Agreement; and

WHEREAS, Grantor has agreed to execute and deliver to Trustee for the benefit of Beneficiary this Deed of Trust in order to secure Grantor’s performance of Grantor’s obligations under the Credit Agreement and under any of the other Credit Documents;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, including Beneficiary’s entering into the Credit Agreement, the receipt and legal sufficiency of which are hereby expressly acknowledged by all parties, to secure the full and complete payment and performance of the Obligations, including Grantor’s performance of Grantor’s obligations pursuant to the Credit Agreement, this Deed of Trust and the other Credit Documents, Grantor and Beneficiary hereby agree as follows:

Grantor does hereby irrevocably GRANT, PLEDGE, MORTGAGE, WARRANT, SELL, TRANSFER, ASSIGN, and CONVEY unto Trustee and Trustee’s successors, assigns and substitutes in trust hereunder, with covenants of general warranty and **WITH POWER OF SALE** and right of entry and possession, for the use and benefit of Beneficiary, as collateral agent for the Lenders, the real and personal property, rights, titles, interests and estates constituting the Property (defined below), subject, however, to the Permitted Liens and Existing Liens (defined below) **TO HAVE AND TO HOLD** the Property unto Trustee and Trustee’s successors, assigns and substitutes in trust hereunder, subject to the terms and conditions of this Deed of Trust, **WITH POWER OF SALE**, forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Property unto Beneficiary against every person whomsoever lawfully claiming or to claim the same or any part thereof other than any person claiming by, through or under Beneficiary; provided, however, that if Grantor (i) shall perform all obligations hereunder and (ii) the Obligations are paid in full, the Commitments are cancelled or terminated and all outstanding Letters of Credit are cancelled or have expired, then the liens, security interests, estates and rights granted by this Deed of Trust shall be terminated by Beneficiary by execution of a discharge of this Deed of Trust in recordable form and delivery of the discharge to Grantor or Grantor’s designee.

All of the foregoing being collectively referred to as the “**Property**”:

- A. All that certain land located in Washington County, Tennessee and more particularly described in Exhibit A annexed hereto and made a part hereof (collectively, the “**Land**”).
- B. All the buildings, structures and improvements, now or at any time hereafter erected on the Land or any part thereof (collectively, the “**Buildings**”).
- C. All machinery, apparatus, equipment, personal property and fixtures of every kind and nature whatsoever now or hereafter located in, on or about any one or more of the Buildings or upon the Land, or attached to or used or useable in connection with the operation or maintenance of the Land or any one or more of the Buildings, or any part thereof, and now owned or hereafter acquired (collectively, the “**Building Equipment**”); the Land, the Buildings and the Building Equipment being hereafter sometimes collectively referred to as the “**Premises**”).
- D. All right, title and interest of Grantor, whether now owned or hereafter acquired, in and to any opened or proposed avenues, streets, roads, public places, sidewalks, alleys, strips or gores of land, in front of or adjoining the Land or any one or more of the Buildings and all easements, tenements, hereditaments, appurtenances, rights and rights of way, public or private, pertaining or belonging to the Land or any one or more of the Buildings.
- E. All insurance proceeds and all awards and payments, subject to applicable provisions of this Deed of Trust, including interest thereon, and the right to receive the same, which may be made in respect of all or any part of any of the Premises or any estate or interest therein or appurtenant thereto, as a result of damage to or destruction of all or any part of any of the Premises, the exercise of the right of condemnation or eminent domain, the closing of, or the alteration of the grade of, any street on or adjoining the Land, or any other injury to or decrease in the value of all or any part of any of the Premises.
- F. All right, title and interest of Grantor in and to any and all present and future Leases (as defined in Paragraph 49) of all or any part of the Premises, and in and to the rents, issues and profits payable thereunder and cash or securities deposited thereunder as lessees’ security deposits.
- G. All franchises, permits, licenses and rights therein respecting the use, occupation and operation of the Premises or the activities conducted thereon or therein.
- H. All right, title and interest of Grantor in and to any minerals, oil or gas located on, under or appurtenant to the Land.
- I. All right, title and interest of Grantor in and to any tax refunds with respect to the Premises.

6

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- J. To the extent assignable, all of Grantor’s interest in and to all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of the Premises and all right, title and interest of Grantor therein (collectively, the “**Contracts**”).
 - K. All of Grantor’s interest in and to all easements, rights, licenses, privileges and appurtenances including, without limitation, development and air rights now or hereafter belonging or in any way appertaining to the Land.
 - L. All of the estate and rights of Grantor now or hereafter acquired in and to land lying in streets, roads, ways and alleys, open or proposed, adjoining or contiguous to the Land.
 - M. The rents, issues and profits of any of the foregoing.

AND GRANTOR COVENANTS, REPRESENTS AND WARRANTS TO AND FOR THE BENEFIT OF TRUSTEE, BENEFICIARY AND THE SECURED PARTIES AS FOLLOWS:

1. Payment of Obligations and Performance of Covenants and Agreements Grantor shall pay or perform the Obligations when due in accordance with the provisions of the Credit Agreement, this Deed of Trust, and the other Credit Documents and perform the covenants and agreements of Grantor set forth in the Credit Documents.
2. Title to Property Grantor represents and warrants that (a) it owns good and marketable fee simple title to the Premises, (b) it has the good and unrestricted right, full power and lawful authority to make this Deed of Trust in accordance with the terms hereof, (c) Grantor has obtained any and all consents and approvals necessary or required for the making of this Deed of Trust, and the making of this Deed of Trust will not violate any contract or agreement to which Grantor is a party or by which the Property is bound, and (d) the Premises is free of all liens, encumbrances, adverse claims and other defects of title whatsoever except those items listed on Exhibit B annexed hereto and made a part hereof (collectively, the “**Existing Liens**”) and Permitted Liens. Grantor does hereby and shall forever warrant and defend its title to and interest in the Property and the validity and priority of the lien of this Deed of Trust, subject to the Existing Liens and the Permitted Liens, to Beneficiary and the Secured Parties, their respective successors and assigns, against all claims and demands whatsoever of any Person or Persons. As of the date hereof, there are no defenses or offsets to this Deed of Trust or to the Obligations.
3. Intercreditor Agreement Notwithstanding anything herein to the contrary, and regardless of the priority of recordation of this Deed of Trust, the lien and security interests granted to the Beneficiary pursuant to this Deed of Trust and the exercise of any right or remedy by such Beneficiary hereunder are subject to the provisions of that certain Intercreditor Agreement, dated as of May 21, 2007 (the “**Intercreditor Agreement**”), by and among Grantor, Fisher, DD Finance, Holdings,

7

Beneficiary, ABL Administrative Agent, and Credit Suisse, Cayman Islands Branch, in its capacities as collateral agent (together with its successors and assigns from time to time in such capacity, the “**Term Collateral Agent**”) and administrative agent under the Term Loan Documents (as defined therein). In the event of any conflict between the terms of the Intercreditor Agreement and this Deed of Trust, the terms of the Intercreditor Agreement shall govern.

4. Future Advances Without limiting the generality of any other provision hereof, or the terms and provisions of the Credit Agreement, the Obligations shall include, without limitation: (a) all existing indebtedness of Grantor to Beneficiary and/or any of the Secured Parties evidenced by any of the Credit Documents; (b) all future advances that may subsequently be made by Beneficiary and/or the Lenders as provided by any of the Credit Documents; and (c) all other indebtedness, if any, of Grantor to Beneficiary and/or any of the Secured Parties now due or to become due or hereafter contracted pursuant to any of the Credit Documents; provided that the maximum principal amount of all existing indebtedness, future advances, readvances of sums repaid and all other indebtedness secured hereby at any one time shall not exceed the total sum of \$7,000,000 (exclusive of interest thereon, attorneys’ fees and costs, taxes, insurance premiums and all other obligations hereunder).

5. Insurance

- (a) Grantor shall maintain in full force and effect with respect to the Premises the insurance as required by Section 5.5 of the Credit Agreement.

(b) In the event of a foreclosure of this Deed of Trust or other action or proceeding taken by Beneficiary pursuant to this Deed of Trust, the purchaser of the Premises shall succeed to all of the rights of Grantor, including any right to unearned premiums, in and to all policies of insurance which Grantor is required to maintain under Paragraph 5(a) and to all proceeds of such insurance.

6. Impositions

(a) Grantor shall pay, not later than the final delinquency date thereof, all real estate taxes, personal property taxes, assessments, water rates and sewer rents, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Land, and any other amounts which could be or become a lien upon or against the Property or any part thereof (collectively, the "**Impositions**"); provided, no such Imposition 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. Notwithstanding the foregoing, Grantor shall promptly, and in any event on demand, pay such contested Imposition if at any time all or any part of the Property shall be in danger of being foreclosed, sold, forfeited, or otherwise lost or if such contest shall be discontinued. During the continuance of any Event of Default, upon demand by Beneficiary, Grantor will pay the whole of any assessment (an "**Assessment**") for local

8

improvements which may be payable in installments, notwithstanding that such installments may not be due and payable at the time of such demand.

(b) Grantor shall, upon request of Beneficiary, deliver to Beneficiary, within twenty (20) days after the final delinquency date thereof of any Imposition or Assessment, receipts evidencing such payment or other proof of payment satisfactory to Beneficiary.

7. Maintenance and Alterations Grantor will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, the Premises and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

8. Leasing Grantor represents that there are no Leases now in effect. Grantor shall not enter into any Lease of all or any part of any of the Premises without in each instance obtaining Beneficiary's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Grantor shall deliver to Beneficiary a duplicate original of each Lease promptly after the execution thereof. At the option of Beneficiary, each Lease, and all renewals, replacements, extensions, and modifications thereof, and all rights of the tenant thereunder, shall be subject and subordinate to this Deed of Trust, and to each and every advance made or thereafter made hereunder or under the other Credit Documents and to all renewals, additions, amendments, supplements, modifications, consolidations, spreaders, replacements, and extensions of this Deed of Trust and shall contain provisions obligating the tenants thereunder to attorn to Beneficiary or any purchaser therefrom if Beneficiary or such purchaser succeeds to the interest of Grantor under such Lease. Grantor shall fully and promptly perform all of the obligations to be performed by the lessor under any and all Leases. Grantor shall enforce the performance and observance of each and every obligation to be performed or observed by the lessees under such Leases. Grantor shall give prompt notice to Beneficiary of (a) any notice received by Grantor of any default by the lessor under any Lease, (b) the commencement of any action or proceeding by any lessee the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable thereunder, (c) any notice of default given by Grantor to the lessee under any Lease, or (d) the interposition by any lessee of any defense or counterclaim in any action or proceeding brought by Grantor against such lessee; and Grantor will cause a copy of any process, pleading or notice received or served by Grantor in reference to any such action, defense or claim to be promptly delivered to Beneficiary. Grantor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall not mingle such funds with other funds. Grantor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

9. Recording, Filing and Other Fees Grantor shall pay all recording and filing fees, all recording taxes, and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of this Deed of Trust and any other Credit Documents, and shall reimburse Beneficiary and each of the Secured Parties on demand for all costs and expenses of any

9

kind incurred by Beneficiary or any of the Secured Parties in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements). Grantor will, at any time on request of Beneficiary, execute or cause to be executed financing statements, continuation statements, or the like, in respect of any Building Equipment. Grantor shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

10. Taxes Imposed on Beneficiary and the Secured Parties Grantor shall pay all taxes (except income, inheritance and franchise taxes, taxes on the receipt of debt service payments, or taxes in lieu of any of the foregoing) imposed on Beneficiary or any of the Secured Parties by reason of its ownership of this Deed of Trust or any of the other Credit Documents.

11. Compliance with Laws, etc. Grantor shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

12. Inspection Beneficiary and its authorized representatives shall have the right, at Beneficiary's option, at reasonable times during normal business hours and upon reasonable prior written notice, and as often as may be reasonably requested, to enter the Premises for the purpose of inspecting the same and any other Collateral.

13. Certificate of Grantor Grantor, upon request of Beneficiary or any of the Secured Parties, shall certify to Beneficiary or to such Secured Party or to any proposed assignee of or participant in this Deed of Trust, by an instrument in form reasonably satisfactory to Beneficiary or such Secured Party, duly acknowledged, the amount of the Obligations then owing, whether any offsets or defenses exist against payment or performance of all or any portion of the Obligations and anything else that Beneficiary or such Secured Party might reasonably request, within ten (10) days if the request is made personally, or within fifteen (15) days if the request is made by mail. Beneficiary, Secured Parties and any actual or proposed assignee of or participant in this Deed of Trust shall have the right to rely on such certification.

14. Condemnation Grantor shall give notice to Beneficiary upon Grantor receiving written notice of the commencement of any action or proceeding to take all or any part of the Premises by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Land. Beneficiary may participate in any such action or proceeding in the name of Beneficiary or, whenever necessary, in the name of Grantor, and Grantor shall deliver to Beneficiary such instruments as Beneficiary shall request to permit such participation. Grantor shall not settle any such action or proceeding or agree to accept any award or payment without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld, conditioned or delayed), and such award or payment and any interest thereon (hereinafter collectively called the "**Award**") shall be applied in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement.

10

(a) The application of any Award toward payment of the Obligations shall not be deemed a waiver by Beneficiary or any of the Secured Parties of its right to receive payment of the balance of the Obligations in accordance with the provisions of the Credit Documents. Beneficiary shall have the right, but shall be under no obligation, to question the amount of the Award, and Beneficiary may accept the same without prejudice to the rights that Beneficiary may have to question such amount. In any such condemnation or eminent domain action or proceeding Beneficiary may be represented by attorneys selected by Beneficiary, and all sums paid by Beneficiary in connection with such action or proceeding (including, without limitation, reasonable attorneys' fees to the extent permitted by law) shall, on demand, be immediately due from Grantor to Beneficiary and the same shall be secured by this Deed of Trust.

(b) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, the unpaid principal portion of the Advances shall continue to bear interest at the rate payable pursuant to the applicable Credit Documents until the Award shall have been actually received by Beneficiary, and any reduction in the Obligations resulting from the application by Beneficiary of the Award shall be deemed to take effect only on the date of such receipt.

15. Restoration If the Buildings or the Building Equipment shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any taking in condemnation proceedings or the exercise of any right of eminent domain, Grantor shall promptly restore, replace or rebuild the same to as nearly as possible the value, quality and condition they were in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by Beneficiary which approval shall not be unreasonably withheld or delayed, or apply the amount of any Award or insurance proceeds received with respect thereto, in each case in accordance with Section 2.14(b) and Section 2.15 of the Credit Agreement. Grantor shall give prompt notice to Beneficiary of any damage or destruction to the Buildings or Building Equipment by fire or other casualty, as well as the initiation of any condemnation or eminent domain proceeding affecting the same.

16. Default

(a) Any Event of Default under the Credit Agreement shall constitute an Event of Default hereunder and Beneficiary shall have all of the rights of the Administrative Agent and Collateral Agent under the Credit Agreement and all of the remedies hereunder.

(b) All notice and cure periods provided in the Credit Agreement shall run concurrently with any notice and cure periods provided under applicable law.

17. Beneficiary's Right to Perform Grantor's Covenants If there shall be an Event of Default, Beneficiary may, at its option, cure such Event of Default, and Beneficiary and its representatives shall have the right to enter the Premises to do so, and

the amounts advanced by, and the other costs and expenses of, Beneficiary in curing such Event of Default, with interest from the time of the advances or payments at the Base Rate plus the Applicable Margin, shall, on demand, be immediately due from Grantor to Beneficiary and shall be secured by this Deed of Trust.

18. Contemporaneous Mortgages THIS DEED OF TRUST IS MADE CONTEMPORANEOUSLY WITH TWO (2) OTHER MORTGAGES OR DEEDS OF TRUST OF EVEN DATE HERewith (as any of the same may be amended, supplemented, restated, severed, consolidated, spread, partially released, increased or otherwise modified from time to time, the "Contemporaneous Mortgages") GIVEN TO BENEFICIARY COVERING PROPERTY LOCATED IN THE STATES OF MAINE AND WISCONSIN. The Contemporaneous Mortgages secure the Obligations. Upon the occurrence of an Event of Default, Beneficiary may proceed under this Deed of Trust and/or the Contemporaneous Mortgages against any of such property and/or the Property in one or more parcels and in such manner and order as Beneficiary shall elect. Grantor hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, any right to have the property and/or the Property covered by the Contemporaneous Mortgages marshaled upon any foreclosure of this Deed of Trust or the Contemporaneous Mortgages.

19. Appointment of Attorney-in-Fact Grantor hereby constitutes and appoints Beneficiary the true and lawful attorney-in-fact, coupled with an interest, of Grantor and Grantor hereby confers upon Beneficiary the right, in the name, place and stead of Grantor, to, demand, sue for, attach, levy, recover and receive after the occurrence and during the continuance of an Event of Default any of the Rents (as defined in Paragraph 49) and any premium or penalty payable upon the exercise by any third Person under any Lease of a privilege of cancellation originally provided in such Lease and to give proper receipts, releases and acquittances therefor and, after deducting actual out of pocket expenses of collection, to apply the net proceeds as provided in the Credit Agreement or otherwise reasonably determined by Beneficiary after consultation with Grantor; and Grantor does hereby authorize and direct any such third party to deliver such payment to Beneficiary in accordance with this Deed of Trust, and Grantor hereby ratifies and confirms all that its said attorney-in-fact, the Beneficiary, shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Beneficiary, and its successors and assigns, so long as any part of the Obligations other than any contingent indemnity and expense reimbursement obligations for which a claim has not been made remain unpaid or unperformed and undischarged.

Upon the occurrence and during the continuance of an Event of Default, Grantor hereby constitutes and appoints Beneficiary the true and lawful attorney-in-fact, coupled with an interest, of Grantor and Grantor hereby confers upon Beneficiary the right, in the name, place and stead of Grantor, to subject and subordinate at any time and from time to time any Lease to the lien, assignment and security interest of this Deed of Trust, or to any other mortgage, deed of trust, assignment or security agreement, or to any ground lease or surface lease, with respect to all or a portion of the Property, or to request or require such subordination, where such reservation, option or authority was reserved to

Grantor under any such Lease, or in any case where Grantor otherwise would have the right, power or privilege so to do. The foregoing appointment is irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Beneficiary, and its successors and assigns, so long as any part of the Obligations other than any contingent indemnity and expense reimbursement obligations for which a claim has not been made remain unpaid or unperformed and undischarged.

20. Power of Sale Subject to the terms of the Credit Agreement, if an Event of Default shall occur and be continuing, Beneficiary shall have the right and option to proceed with foreclosure by directing Trustee, or Trustee's successors or substitutes in trust, to proceed with foreclosure and to sell, to the extent and in the manner permitted by applicable law, all or any portion of the Property at one or more sales, as an entirety or in parcels, at the door of the courthouse in Washington County, Tennessee, at which foreclosure sales are customarily held, at public auction, to the highest bidder for cash, free from equity of redemption, and any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions all of which are expressly waived by Grantor, after giving notice of the time, place and terms of such sale and of the Property to be sold, by advertising the sale of the property for twenty-one (21) days by three (3) weekly notices (the first of which must be at least twenty (20) days previous to such sale) in some newspaper published in the county and state where the Property is situated, which notice may be given before or after entry by the Trustee. The Trustee shall execute a conveyance to the purchaser in fee simple and deliver possession to the purchaser, which Grantor warrants shall be given without obstruction, hindrance or delay. Where the Property is situated in more than one county, notice as above provided shall be posted and filed in all such counties (if such notices are required by applicable law), and all such Property may be sold in any such county and the notice of such sale shall designate the county where such Property is to be sold. Nothing contained in this Paragraph 20 shall be construed so as to limit in any way Beneficiary's rights to sell the Property, or any portion thereof, by private sale if, and to the extent that, such private sale is permitted under the laws of the applicable jurisdiction or by public or private sale after entry of a judgment by any court of competent jurisdiction so ordering. Grantor hereby irrevocably appoints Beneficiary to be, upon the occurrence and during the continuance of an Event of Default, the

attorney-in-fact of Grantor (coupled with an interest) and in the name and on behalf of Grantor to execute and deliver any deeds, transfers, conveyances, assignments, assurances and notices which Grantor ought to execute and deliver, and to do and perform any other acts or things which Grantor ought to do and perform under the covenants herein contained and, generally, to use the name of Grantor in the exercise of any of the powers hereby conferred on Beneficiary. At any such sale: (a) whether made under the power herein contained or any other legal enactment, or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Beneficiary to have physically present, or to have constructive possession of, the Property (Grantor hereby covenanting and agreeing to deliver to Beneficiary any portion of the Property not actually or constructively possessed by Beneficiary immediately upon demand by Beneficiary) and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale; (b) each instrument of conveyance executed by Beneficiary shall contain a general warranty of

13

title, binding upon Grantor and its successors and assigns; (c) each and every recital contained in any instrument of conveyance made by Beneficiary shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment and/or nonperformance of the Obligations and advertisement and conduct of such sale in the manner provided herein and otherwise required by applicable law; (d) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed; (e) the receipt of Beneficiary, or of such other party or officer making the sale, shall be a sufficient discharge to the purchaser for its purchase money and neither such purchaser nor its assigns or personal representatives shall thereafter be obligated to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or non-application thereof; (f) to the fullest extent permitted by applicable law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity (including any statutory or common law right of redemption, which is hereby waived to the fullest extent permitted by applicable law), in and to the property sold in any such event, and such sale shall be a perpetual bar, both at law and in equity, against Grantor and any and all other persons claiming by, through or under Grantor; and (g) to the extent and under such circumstances as are permitted by applicable law, Beneficiary may be a purchaser at any such sale, and shall have the right, after paying or accounting for all costs of said sale or sales, to credit the amount of the bid upon the amount of the Obligations in lieu of cash payment. Each remedy provided in this Deed of Trust is distinct from and cumulative with all other rights and remedies provided hereunder or afforded by applicable law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever.

21. Application of Proceeds of Foreclosure and Other Remedies All amounts received by Beneficiary pursuant to the exercise of remedies hereunder shall be applied first to expenses due Beneficiary or Trustee including, but not limited to, expenses of foreclosure and all expenses incurred in leasing the Property, retaining a managing agent therefor, or fulfilling Grantor's obligations under any Lease, including attorneys fees; second, to interest included in the Indebtedness; third, to principal included in the Indebtedness, in such order as Beneficiary may elect; and the surplus, if any, shall be paid to the party or parties entitled thereto.

22. Waiver of Redemption Rights Any sale of any or all of the Property pursuant to the power of sale or judicial sale provided for herein or in realization of the security interest granted herein shall be made free from the equity of redemption, statutory right of redemption, homestead, dower, curtesy, exemption rights, and all other rights and interests of Grantor, all of which are hereby expressly waived.

23. Judicial Foreclosure After the occurrence and during the continuance of an Event of Default, Beneficiary may institute an action of foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement hereof and realization on the Property or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire principal then outstanding under the Credit Documents, with interest thereon at the rate stipulated in the Credit Documents to the date of default and thereafter at the default

14

interest rate specified in Section 2.9 of the Credit Agreement together with all other sums secured by this Deed of Trust, all costs of suit, including, without limitation, the expenses which are described in Paragraphs 27 and 31, and interest at the default interest rate specified in Section 2.9 of the Credit Agreement on any judgment obtained by Beneficiary from and after the date of any judicial sale of any of the Property until actual payment. Upon any sale or sales made hereunder, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary and/or any of the Secured Parties may bid for and acquire any of the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Obligations the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust. Except as otherwise provided in the Credit Agreement, the proceeds of such sale shall be applied first to the payment of the costs and charges of such sale, including, without limitation, Beneficiary's attorneys' fees, (to the extent permitted by law), and second to the payment of the Obligations, the surplus money, if any, to be paid to the Person(s) legally entitled thereto (including Grantor, to the extent so entitled, if at all). Upon the request of Beneficiary and to the extent not prohibited by applicable law, Grantor shall execute and file with the clerk of the court a legally sufficient waiver of any statutory waiting period with respect to the execution of a judgment obtained by Beneficiary in connection with any foreclosure proceedings. The obligation of Grantor to so execute and file such waiver shall survive the termination of this Deed of Trust. Following a foreclosure sale, the sheriff shall deliver to the purchaser the sheriff's deed (and bill of sale as to any personalty) conveying the property so sold without any covenant or warranty, express or implied.

24. Sale in Parcels In the event of a foreclosure of this Deed of Trust or upon any sale under this Deed of Trust pursuant to judicial proceedings or otherwise, the Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Beneficiary in its sole discretion may select.

25. Notice Upon Acceleration Whenever Beneficiary in this Deed of Trust is given the option to accelerate the maturity of all or part of the Obligations upon the occurrence of an Event of Default, Beneficiary may, to the extent permitted by law, do so without prior notice or demand to or upon Grantor except as otherwise specifically provided herein.

26. Possession of Premises To the extent permitted by law, after the occurrence and during the continuance of an Event of Default, Beneficiary and its agents and any receiver appointed by a court are authorized to (a) take possession of the Premises, with or without legal action, and by force if necessary; (b) lease the Premises or make modifications to or cancel Leases; (c) maintain, repair, alter, and restore the Premises; (d) with or without taking possession, collect all Rents and profits payable under all Leases directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists under this Deed of Trust accompanied by a demand on such lessee for the payment to Beneficiary of all Rents due and to become due under its Lease, and Grantor FOR THE BENEFIT OF BENEFICIARY AND EACH SUCH LESSEE

15

hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Beneficiary's statement of default and shall unequivocally be authorized to pay said Rents to Beneficiary without regard to the truth of Beneficiary's statement of an Event of Default and notwithstanding notices from Grantor disputing the existence of an Event of Default such that the payment of rent by the lessee to Beneficiary pursuant to such a demand shall constitute performance in full of the lessee's obligation under the Lease for the payment of Rents by the lessee to Grantor; and (e) after deducting all costs of collection and administration expense, apply the net Rents and profits to the payment of Impositions, insurance premiums and all other carrying charges (including, without limitation, agents' compensation and fees and reasonable costs of counsel to the extent permitted by law, and receivers) and to the maintenance, repair or restoration of the Premises, or, except as otherwise provided in the Credit Agreement, on account and in reduction of the Obligations in such order and amounts as Beneficiary in Beneficiary's sole discretion may elect. Beneficiary shall be liable to account only for Rents

and profits actually received by Beneficiary.

27. Expenses of Beneficiary and/or the Secured Parties All sums (including reasonable attorneys' fees and disbursements, to the extent permitted by law) paid by Beneficiary and/or any of the Secured Parties in connection with any litigation to prosecute or defend the rights and obligations created by this Deed of Trust, with interest thereon at the default interest rate specified in Section 2.9 of the Credit Agreement from the time of payment by Beneficiary and/or any of the Secured Parties shall, on demand, be immediately due from Grantor to Beneficiary and/or any such Secured Party and shall be added to and included in the Obligations and shall be secured by this Deed of Trust.

28. Grantor's Waivers

(a) Grantor, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter in force, (i) the benefit of any and all valuation and appraisal laws, (ii) any right of redemption whether statutory or otherwise, in respect of the Property, (iii) any applicable homestead or dower laws, (iv) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of court in the nature of any one or more of them, (v) any right to have any of the Property marshaled upon foreclosure of this Deed of Trust, (vi) the right to interpose any set-off, recoupment, counterclaim or cross-claim in any litigation in any court with respect to, in connection with, or arising out of this Deed of Trust or any of the other Credit Documents unless such set-off, recoupment, counterclaim or cross-claim could not, by reason of the applicable Federal or State procedural laws, be interposed, pleaded or alleged in any other action, and (vii) trial by jury in connection with any litigation arising out of this Deed of Trust or any of the other Credit Documents and any right it may have to claim or recover in any such litigation any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages.

(b) Beneficiary, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, whether now or hereafter

16

in force, trial by jury in connection with any litigation arising out of this Deed of Trust or any of the other Credit Documents.

29. Partial Foreclosure Beneficiary may from time to time, if permitted by law, take action to recover any sums, whether interest, principal or any other sums, required to be paid under this Deed of Trust or any other Credit Document as the same become due, without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Grantor existing when such earlier action was commenced. Beneficiary may also foreclose this Deed of Trust for any sums due under this Deed of Trust or any other Credit Document and the lien of this Deed of Trust shall continue to secure the balance of the Obligations due.

30. No Waiver; Rights Cumulative No failure or delay on the part of Beneficiary or any of the Secured Parties 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 Beneficiary and each of the Secured Parties 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.

31. Attorneys' Fees If this Deed of Trust shall be foreclosed, or if any of the Credit Documents is placed in the hands of an attorney for collection or is collected through any court, including any bankruptcy court, there shall be included in the computation of the sums secured hereby, to the extent permitted by law, the amount of a reasonable fee for the services of the attorney retained by Beneficiary in the foreclosure action or proceeding, and all disbursements, costs, allowances and additional allowances provided by law.

32. Interest After Maturity The Obligations secured by this Deed of Trust shall bear interest from and after maturity, whether or not resulting from acceleration, at the default interest rate specified in Section 2.9 of the Credit Agreement, but this shall not constitute an extension of time for payment of the Obligations.

33. No Credit for Taxes Grantor shall not claim or demand or be entitled to any credit or credits on account of any of the sums secured hereby by reason of the Impositions assessed against all or any part of the Property or for any payments made on account thereof. No deductions shall be made or claimed from the taxable value of all or any part of the Premises by reason of this Deed of Trust.

34. Liens This Deed of Trust is and shall be maintained as a valid first lien on the Property subject only to any encumbrances created pursuant to the Credit Documents and the Existing Liens and the Permitted Liens, if any. Notwithstanding any

17

provision in the Credit Documents to the contrary, Grantor shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the Rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien"), whether senior or junior in lien to this Deed of Trust, other than the lien of (i) this Deed of Trust and (ii) the Permitted Liens (including 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; provided, however, that Grantor shall give Beneficiary at least twenty (20) days prior written notice of any Permitted Lien described in the parenthetical to clause (ii) above which is to be created after the date hereof together with a reasonably detailed description thereof; and provided, further, that nothing contained in this Paragraph shall require Grantor to pay any real estate taxes or other Impositions prior to the time when same are required to be paid under this Deed of Trust. Grantor will keep and maintain all of the Premises free from all liens of Persons supplying labor or materials relating to the construction, alteration, modification or repair of the Premises. If any such lien shall be filed against any of the Property, Grantor agrees to discharge the same of record (by payment, bonding or otherwise) within 10 days of notice of the filing thereof. No financing statement, conditional bill of sale or chattel mortgage shall be made or filed against any Building Equipment without the prior consent of Beneficiary and if at any time there should be any (with or without the consent of Beneficiary), then upon the occurrence and during the continuance of an Event of Default, all right, title and interest of Grantor in and to all deposits and payments made thereon are hereby assigned to Beneficiary.

35. Change in Taxation In the event of the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (a) deducting or allowing Grantor to deduct from the value of the Property for the purpose of taxation any lien or security interest thereon, (b) imposing, modifying or deeming applicable any reserve or special requirement against deposits in or for the account of, or loans by, or other liabilities of, or other assets held by Beneficiary or any of the Secured Parties, or (c) subjecting Beneficiary or any of the Secured Parties to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Deed of Trust, the Obligations, Beneficiary or any of the Secured Parties, and the result is to increase the taxes imposed upon or the cost to Beneficiary or any of the Secured Parties of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder or under the other Credit Documents, then, and in any such event, Grantor shall, on demand, pay to Beneficiary for the account of Beneficiary or any of the Secured Parties, as the case may be, such additional amounts as may be required to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful or would constitute usury under applicable law, then Beneficiary may, at its option, require Grantor to make a partial repayment of the Obligations in an amount equal to the then value of the Premises.

further security for the payment of the Obligations and Grantor grants to Beneficiary during the existence of an Event of Default the right to enter the Premises for the purpose of collecting the same and to let the Premises, or any part thereof, and, except as otherwise provided in the Credit Agreement, to apply said Rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the payment in full of the Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit. Beneficiary hereby waives the right to enter the Premises for the purpose of collecting said Rents, issues and profits, and Grantor shall be entitled to collect, receive and use said Rents, issues and profits, until the occurrence and during the continuance of an Event of Default. During the continuance of any Event of Default, the right of Grantor to collect, receive and use said Rents, issues and profits, shall be revoked forthwith. Further, from and after delivery of written notice of such revocation, constructive possession of the Premises shall be vested in Beneficiary, and this assignment shall be activated and perfected. Notwithstanding the foregoing, this assignment shall also be activated and perfected upon Beneficiary's exercising, upon the occurrence and during the continuance of an Event of Default, any of the following remedies pursuant to this Deed of Trust: (i) taking actual possession of the Premises; (ii) moving or applying for the appointment of a receiver; (iii) filing or commencing an action to foreclose this Deed of Trust; or (iv) collecting the Rents directly from the tenant(s). Grantor shall, from time to time after request by Beneficiary, execute, acknowledge and deliver to Beneficiary, in form reasonably satisfactory to Beneficiary, separate assignments effectuating the foregoing. Neither Beneficiary nor the Secured Parties shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Grantor under any Lease or other agreement affecting all or any part of the Premises, and Grantor hereby agrees to indemnify Beneficiary and the Secured Parties for and hold them harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Premises upon Beneficiary or the Secured Parties, nor make Beneficiary or the other Secured Parties liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Premises resulting in injury, death or property damage. In addition, after the occurrence and during the continuance of an Event of Default and following the giving of notice to Grantor, Grantor will pay monthly in advance to Beneficiary, or to any receiver appointed to collect said Rents, issues and profits, the fair and reasonable rental value for the use and occupancy of the Premises or of such part thereof as may be in the possession of Grantor, and upon default in any such payment will vacate and surrender the possession thereof to Beneficiary or to such receiver, and in default thereof may be evicted by summary or other proceedings.

37. Security Agreement It is the intention of the parties hereto that this instrument shall constitute a Security Agreement and a Financing Statement within the meaning of the Uniform Commercial Code as enacted in the state in which the Land is located with respect to the personalty and fixtures comprising a part of the Property, and that a security interest shall attach thereto for the benefit of Beneficiary, as secured party, to further secure the Obligations. Grantor hereby authorizes Beneficiary to file financing and continuation statements with respect to such collateral in which Grantor

has a mortgageable interest, without the signature of Grantor whenever lawful, and upon request, Grantor shall promptly execute financing and continuation statements in form satisfactory to Beneficiary to further evidence and secure Beneficiary's interest in such collateral, and shall pay all filing fees in connection therewith. In the event of the occurrence and during the continuance of an Event of Default, Beneficiary, pursuant to the applicable provision of the Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that in the event Beneficiary elects to proceed with respect to collateral constituting personalty or fixtures separately from the real property, without demand, notice or advertisement whatsoever except that where an applicable statute requires reasonable notice of sale or the dispositions, the giving of ten (10) days' notice by Beneficiary to Grantor, shall be deemed to be reasonable notice thereof and Grantor waives any other notice with respect thereto.

38. No Release Neither Grantor nor any other Person now or hereafter obligated for the payment or performance of all or any portion of the Obligations shall be released from paying such Obligations and the lien of this Deed of Trust shall not be affected by reason of (a) the failure of Beneficiary or any of the Secured Parties to comply with any request of Grantor, or of any other Person so obligated, to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any of the covenants and agreements of Grantor under the Credit Documents, (b) the release, regardless of consideration, of the whole or any part of the security held for the Obligations, (c) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or performance of all or any portion of the Obligations, or (d) any agreement or stipulation extending the time of payment or modifying the terms of any of the Credit Documents, and in the event of such agreement or stipulation, Grantor and all such other Persons shall continue to be liable under the Credit Documents, as amended by such agreement or stipulation, unless expressly released and discharged in writing by Beneficiary and the Secured Parties.

39. Notices All notices, consents and other communications provided for herein shall be sent to such Person's address as follows (or to such other address indicated in an unrevoked written notice from such Person given in accordance the terms of this Paragraph):

(a) if to Grantor, Douglas Dynamics, L.L.C., 7777 North 73rd Street, Milwaukee, WI 53223, Attention: Chief Executive Officer and President, Teletype No.: (414) 354-8448, with a copy to Aurora Capital Group, 10877 Wilshire Boulevard, Suite 2100, Los Angeles, CA 90024, Attention: Secretary, Douglas Dynamics Holdings, Inc., Teletype No.: (310) 824-2791, with a copy to Gibson, Dunn & Crutcher LLP, 333 S. Grand Avenue, Los Angeles, CA 90071, Attention: Jeff R. Hudson, Esq., Teletype No.: 213-229-6332;

(b) if to Beneficiary or Collateral Agent, at JPMorgan Chase Bank, N.A., 111 East Wisconsin Ave., Floor 15, Milwaukee, WI 53202-4815, Attention: Attention: Michael A. Hintz, Account Executive — ABL, Teletype No.: 414-977-6666, with a copy to Skadden Arps Slate Meagher & Flom LLP, 333 West Wacker Drive, Suite 2100, Chicago, IL 60606, Attention: Seth E. Jacobson, Esq., Teletype No.: (312) 407-0411;

(c) if to any of the Secured Parties, at the address set forth below such Secured Party's name on the signature pages of the Credit Agreement.

Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, 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 Beneficiary shall be effective until received by Beneficiary.

40. Severability In case any provision in or obligation hereunder 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.

41. Intentionally Deleted

42. Indemnification Against Liabilities Grantor will defend, indemnify, pay and hold harmless Beneficiary and the Secured Parties and their respective officers, partners, directors, trustees, employees, agents and Affiliates of Beneficiary and each of the Secured Parties from and against any and all liabilities,

obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Beneficiary and any of the Secured Parties by reason of (a) ownership of a mortgagee's/beneficiary's or participating lender's interest in the Property, (b) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, unless due to the willful misconduct of Beneficiary or such Secured Party, (c) any use, nonuse or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Grantor to perform or comply with any of the terms of this Deed of Trust, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof made or suffered to be made by or on behalf of Grantor, (f) any negligence or tortious act on the part of Grantor or any of its agents, contractors, lessees, licensees or invitees, or (g) any work in connection with any alterations, changes, new construction or demolition of the Premises. All amounts payable to Beneficiary and the Secured Parties under this Paragraph shall be payable promptly on demand and shall be deemed indebtedness and Obligations secured by this Deed of Trust and any such amounts shall bear interest at the default interest rate

21

specified in Section 2.9 of the Credit Agreement from the date of such demand. In case any action, suit or proceeding is brought against Grantor, Beneficiary and/or any of the Secured Parties by reason of any such occurrence, Grantor, upon request of Beneficiary or any of the Secured Parties will, at Grantor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Beneficiary or such Secured Party and approved by Grantor.

43. No Oral Changes This Deed of Trust and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

44. Governing Law THE PROVISIONS OF THIS DEED OF TRUST REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS DEED OF TRUST AND THE RIGHTS AND OBLIGATIONS OF GRANTOR AND BENEFICIARY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPALS THEREOF.

45. Construction This Deed of Trust shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

46. Headings Paragraph 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.

47. After Acquired Property All property of every kind which is hereafter acquired by Grantor which, by the terms hereof, is required or intended to be subjected to the lien of this Deed of Trust shall, immediately upon the acquisition thereof by Grantor, and without any further giving of a deed of trust and/or mortgage, conveyance, assignment or transfer, become subject to the lien of this Deed of Trust.

48. Further Assurances Grantor shall execute, acknowledge and deliver to Beneficiary any documents and instruments which Beneficiary may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting of Beneficiary's security and rights under this Deed of Trust, in form and substance reasonably satisfactory to Beneficiary.

49. Definitions The following terms shall, for all purposes of this Deed of Trust, have the respective meanings herein specified unless the context otherwise requires and such meanings shall apply equally to the singular and plural forms of such defined terms unless a definition is provided herein for both the singular and plural form of such defined term:

22

(a) "Lease" shall mean every lease or occupancy agreement for the use or hire of all or any portion of the Premises, which shall be in effect at the date hereof or which shall hereafter be entered into by or on behalf of Grantor.

(b) "Rents" shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources arising from or attributable to the Land and the Building, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property, and proceeds, if any, from business interruption or other loss of income insurance.

50. Successors and Assigns The terms, covenants and provisions of this Deed of Trust shall apply to and be binding upon Grantor and the successors and assigns of Grantor and shall inure to the benefit of Beneficiary, the Secured Parties and their respective successors and assigns. All grants, covenants, terms, provisions, and conditions contained herein shall run with the Land.

51. Credit Agreement In the event of any inconsistency or conflict between the terms and provisions of the Credit Agreement and this Deed of Trust, the terms and provisions of the Credit Agreement shall control.

52. Trustee The Trustee named herein shall be clothed with full power to act when action hereunder shall be required, and to execute any conveyance of the Property. In the event that the substitution of a Trustee shall become necessary for any reason, the substitution of one trustee in the place of those or any of those named herein shall be sufficient; however, more than one Trustee may be named. The term "Trustee" shall be construed to mean "Trustees" whenever the sense requires. Trustee is hereby released from all obligations imposed by statute which can be waived. The necessity of the Trustee herein named, or any successor in trust, making oath or giving bond, is expressly waived.

The Trustee, or any one acting in Trustee's stead, shall have, in Trustee's discretion, authority to employ all proper agents and attorneys in the execution of this Deed of Trust and/or in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the Property, should any be realized; and if no sale be made or if the proceeds of sale be insufficient to pay the same, then Grantor hereby undertakes and agrees to pay the cost of such services rendered to said Trustee. The Trustee may rely on any document believed by him in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon.

23

If the Trustee shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto, or the interest of the Trustee or Beneficiary under this Deed of Trust, the Trustee and Beneficiary shall be reimbursed by Grantor, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by Trustee or either of them in any such case, and the same shall be secured hereby as a further charge and lien upon the Property.

In the event of the death, refusal, or of inability for any cause, on the part of the Trustee named herein, or of any successor trustee, to act at any time when action under the foregoing powers and trust may be required, or for any other reason satisfactory to Beneficiary, Beneficiary is authorized, either in its own name or through an attorney or attorneys in fact appointed for that purpose, by written instrument duly registered, to name and appoint a successor or successors to execute this Deed of Trust, such appointment to be evidenced by writing, duly acknowledged; and when such writing shall have been registered, the substituted trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named herein and such like power of substitution shall continue so long as any part of the debt secured hereby remains unpaid.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed under seal as of the day and year first above written.

Grantor:

DOUGLAS DYNAMICS, L.L.C.

By: _____

Name:

Title:

STATE OF)

COUNTY OF)

Before me, _____, a Notary Public of the State and County aforesaid, personally appeared _____, with whom I am personally acquainted, and who, upon oath, acknowledged himself/herself to be _____ of DOUGLAS DYNAMICS, L.L.C., a Delaware limited liability company, and that he/she as such _____, being authorized so to do, executed the this instrument on behalf of said DOUGLAS DYNAMICS, L.L.C..

Witness my hand and seal, at office in _____, _____, this the _____ day of May, 2007.

NOTARY PUBLIC

My Commission Expires: _____

Exhibit A

Description of the Land

SITUATE, lying and being in the 9th Civil District of Washington County, Tennessee, and being more particularly described as follows, to-wit:

BEGINNING at an iron rod in the southwesterly right of way line of Riverview Drive (Tennessee State Route 2601), corner to City of Johnson City (Deed Book 284, page 241); thence leaving Riverview Drive and with the line of the City of Johnson City, S. 41° 19' 00" W., 848.50 feet to an iron rod, corner to General Shale Products Corp. (Deed Book 693, page 422); thence with General Shale's line, the following six courses and distances: N. 34° 22' 00" W., 153.40 feet to an iron rod; N. 39° 29' 00" E., 166.20 feet to an iron rod; N. 37° 16' W., 16.0 feet to an iron rod; N. 47° 32' 07" W., 548.35 feet to a concrete monument; N. 37° 10' 39" W., 378.19 feet to iron rod; and N. 26° 38' 07" W., 334.55 feet to a concrete monument, corner to City of Johnson City (Deed Book 703, page 113); thence with the line of the City of Johnson City, the following two courses and distances: N. 75° 20' 06" E., 291.24 feet to a concrete monument, and N. 19° 11' 00" W., 175.82 feet to a concrete monument, corner to Guy and Mae Erwin (Deed Book 469, page 25); thence with Erwin's line, N. 55° 25' 00" E., 309.91 feet to a concrete monument located in the southwesterly right of way line of Riverview Drive (Tennessee State Route 2601); thence with the southwesterly right of way line of Riverview Drive, the following five courses and distances: S. 37° 32' 10" E., 333.17 feet to an iron rod; S. 41° 20' 23" E., 223.32 feet to an iron rod; S. 36° 55' 23" E., 504.89 feet to a point; S. 41° 05' 23" E., 97.0 feet to an iron rod and S. 51° 46' 23" E., 174.58 feet to the point of BEGINNING, containing 21.599 acres, more or less, according to a map entitled "E. G. Smith Construction Products, Inc." dated September 29, 1992, prepared by Steven C. Lyons, TRLS No. 1608, 116 Free Hill Road, Gray, TN 37615.

AND BEING the same property conveyed to New DD, LLC from Douglas Dynamics, L.L.C. by Special Warranty Deed dated March 26, 2004, recorded in Roll 382, Image 2259, in the Register's Office for Washington County, Tennessee, to which reference is here made. See Certificate of Amendment amending the name from New DD, LLC to Douglas Dynamics, LLC of record in Roll 423, Image 2332, in the aforesaid Register's Office.

Schedule B

Existing Liens

1. All those exceptions to title set forth on Schedule B to Loan Policy No. 15341 issued by Lawyers Title Insurance Corporation.
2. Those liens and security interests granted in favor of the Term Collateral Agent disclosed by the Intercreditor Agreement.

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) <u>minus</u> Item (d)):	\$

K-1

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)):	\$

K-2

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) minus 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.

K-3

EXHIBIT L

BORROWING BASE CERTIFICATE

L-1



Reserve Against Col Avail

Obligor Number:

Loan Number:

Rpt #

Date:

Period Covered:

COLLATERAL CATEGORY

Table with columns: Description, Cash, Accounts Receivable, Inventory per Appraisal, Inventory Per Bank. Rows include Beginning Balance, Additions, Deductions, Total Ending Collateral Balance, Less Ineligible (Past Due, Cross-age, Foreign, Contra, Other), Total Eligible Collateral, Advance Rate Percentage, Net Available - Borrowing Base Value, Reserves (Other), Total Borrowing Base Value, Total Availability/ CAPS, Revolver Line, Maximum Borrowing Limit, A Suppressed Availability, LOAN STATUS, Previous Loan Balance, Less: A. Net Collections, B. Adjustments / Other, Add: A. Request for Funds, B. Adjustments / Other, New Loan Balance, Letters of Credit/Bankers Acceptance Outstanding, Availability Not Borrowed, Term Loan, OVERALL EXPOSURE.

Pursuant to, and in accordance with, the terms and provisions of that certain Loan and Security Agreement ("Agreement"), between JPM Chase ("Secured Party") and Douglas Dynamics Holdings, Inc., ("Borrower"), Borrower is executing and delivering to Secured Party this Collateral Report accompanied by supporting data (collectively referred to as ("Report").

Borrower warrants and represents to Secured Party that this Report is true, correct, and based on information contained in Borrower's own financial accounting records.

Borrower, by the execution of this Report, hereby ratifies, confirms and affirms all of the terms, conditions and provisions of the Agreement, and further certifies on this []th day of [], [], that the Borrower is in compliance with said Agreement.

BORROWER NAME:

AUTHORIZED SIGNATURE:

Douglas Dynamcis, L.L.C.

EXHIBIT M

FORM OF COLLATERAL ACCESS AGREEMENT

LANDLORD'S LIEN WAIVER, COLLATERAL ACCESS AGREEMENT AND CONSENT

THIS LANDLORD'S LIEN WAIVER, COLLATERAL ACCESS AGREEMENT AND CONSENT (the "Agreement") is made and entered into as of 2007 by and among (i) _____, having an office at _____ ("Landlord"), (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 "Term Collateral Agent") pursuant to that certain Credit and Guaranty Agreement dated as of May 21, 2007 (the "Term Credit Agreement"), 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 "ABL Collateral Agent" 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)

M-1

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 default 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.

M-2

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:

M-3

Schedule A

Description of Leases

<u>Lessor</u>	<u>Lessee</u>	<u>Dated</u>	<u>Modification</u>	<u>Location/Property Address</u>
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M-4

EXHIBIT N

INTERCREDITOR AGREEMENT

N-1

EXECUTION VERSION

INTERCREDITOR AGREEMENT

by and among

DOUGLAS DYNAMICS, L.L.C.
DOUGLAS DYNAMICS FINANCE COMPANY
FISHER, LLC
DOUGLAS DYNAMICS HOLDINGS, INC.

The Grantors from Time to Time Parties Hereto,

CREDIT SUISSE, CAYMAN ISLANDS BRANCH,

as the Administrative Agent under the ABL Loan Documents,
as the Administrative Agent and the Collateral Agent under the Term Loan Documents,

and

JPMORGAN CHASE BANK, N.A.,
as the Collateral Agent under the ABL Loan Documents

Dated as of May 21, 2007

Intercreditor Agreement

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I		
DEFINITIONS		
SECTION 1.1	Defined Terms	2
SECTION 1.2	Terms Generally	13
ARTICLE II		
PRIORITY OF LIENS; ETC.		
SECTION 2.1	Subordination of Liens; Etc	13
SECTION 2.2	Prohibition on Contesting Liens	15
SECTION 2.3	No New Liens	15
SECTION 2.4	Similar Liens and Agreements	16
ARTICLE III		
ENFORCEMENT		
SECTION 3.1	Exercise of Remedies	16
ARTICLE IV		
PAYMENTS		
SECTION 4.1	Application of Proceeds	21
SECTION 4.2	Payments Over	22
ARTICLE V		
OTHER AGREEMENTS		
SECTION 5.1	Releases	23
SECTION 5.2	Insurance - ABL Priority Collateral — Settlement Prior to Discharge of ABL Obligations	24
SECTION 5.3	Amendments to Credit Documents	25
SECTION 5.4	Amendments to Security Documents	26
SECTION 5.5	Rights As Unsecured Creditors	28
SECTION 5.6	Bailee for Perfection	28
SECTION 5.7	When Discharge of Obligations Deemed to Not Have Occurred	30
SECTION 5.8	Option to Purchase	31
i		
SECTION 5.9	Entry Upon Premises by the ABL Collateral Agent and the ABL Creditors	32
SECTION 5.10	Rights under Permits and Licenses	34
ARTICLE VI		
INSOLVENCY OR LIQUIDATION PROCEEDINGS		
SECTION 6.1	Finance and Sale Issues	34
SECTION 6.2	Relief from the Automatic Stay	37
SECTION 6.3	Adequate Protection	37
SECTION 6.4	No Waiver; Voting Rights	38
SECTION 6.5	Preference Issues	38
SECTION 6.6	Post-Petition Interest	39
SECTION 6.7	Voting for Plan of Reorganization	40
ARTICLE VII		

RELIANCE; WAIVERS; ETC.

SECTION 7.1	Reliance	40
SECTION 7.2	No Warranties or Liability	40
SECTION 7.3	No Waiver of Lien Priorities	41
SECTION 7.4	Waiver of Liability; Indemnity	44
SECTION 7.5	Obligations Unconditional	45

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1	Conflicts	46
SECTION 8.2	Effectiveness; Continuing Nature of this Agreement; Severability	46
SECTION 8.3	Amendments; Waivers	47
SECTION 8.4	Information Concerning Financial Condition of the Grantors and their Subsidiaries	48
SECTION 8.5	Subrogation	48
SECTION 8.6	Reserved	49
SECTION 8.7	SUBMISSION TO JURISDICTION; WAIVERS	49
SECTION 8.8	Notices	50
SECTION 8.9	Further Assurances	50
SECTION 8.10	APPLICABLE LAW	50
SECTION 8.11	Binding on Successors and Assigns	50
SECTION 8.12	Specific Performance	50
SECTION 8.13	Headings	51
SECTION 8.14	Counterparts	51
SECTION 8.15	Authorization	51
SECTION 8.16	No Third Party Beneficiaries; Effect of Agreement	51

ii

SECTION 8.17	Provisions Solely to Define Relative Rights	51
SECTION 8.18	Grantors; Additional Grantors	51

iii

INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT, dated as of May 21, 2007, and entered into by and among Douglas Dynamics, L.L.C., a Delaware limited liability company (“Douglas”), Douglas Dynamics Finance Company, a Delaware corporation (“DD Finance”) and Fisher, LLC, a Delaware limited liability company (“Fisher”, and collectively with Douglas and DD Finance, the “ABL Borrower”), Douglas Dynamics Holdings, Inc., a Delaware corporation (“Holdings”), each other Grantor (as hereinafter defined) from time to time party hereto, CREDIT SUISSE, acting through a Cayman Island Branch (“Credit Suisse”), in its capacity as administrative agent under the ABL Loan Documents (as defined below) (together with its successors and assigns from time to time in such capacity (the “ABL Administrative Agent”), JPMorgan Chase Bank, N.A. (“JPMCB”) in its capacity as collateral agent under the ABL Loan Documents (together with its successors and assigns from time to time in such capacity, the “ABL Collateral Agent”), Credit Suisse, in its capacities as administrative agent (together with its successors and assigns from time to time in such capacity the “Term Administrative Agent”) and collateral agent under the Term Loan Documents (as defined below) (together with its successors and assigns from time to time in such capacity, the “Term Collateral Agent”). Capitalized terms used herein but not otherwise defined herein have the meanings set forth in the ABL Credit Agreement or the Term Credit Agreement, as context requires.

RECITALS

WHEREAS, the ABL Borrower, Holdings, the lenders party thereto, the ABL Administrative Agent and the ABL Collateral Agent have entered into that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented, modified and/or Refinanced from time to time in accordance with the terms hereof and thereof, the “ABL Credit Agreement”);

WHEREAS, Douglas (the “Term Borrower”), Holdings, the Subsidiary Guarantors, the lenders party thereto, the Term Collateral Agent and the Term Administrative Agent have entered into that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented, modified and/or Refinanced from time to time in accordance with the terms hereof and thereof, the “Term Credit Agreement”);

WHEREAS, the obligations of the ABL Borrower and the other Grantors under the ABL Loan Documents and all ABL Hedging Obligations will be secured by substantially all the property and assets of the ABL Borrower and the other Grantors, respectively, pursuant to the terms of the ABL Security Documents;

WHEREAS, the obligations of the Term Borrower and the other Grantors under the Term Loan Documents will be secured by substantially all the property and assets of the Term Borrower and the other Grantors, respectively, pursuant to the terms of the Term Security Documents;

WHEREAS, the ABL Loan Documents and the Term Loan Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral;

WHEREAS, in order to induce the ABL Collateral Agent and the ABL Creditors to consent to the Grantors incurring the Term Obligations and to induce the ABL Creditors to extend credit and other financial accommodations and lend monies to or for the benefit of the ABL Borrower or any other Grantor, the Term Collateral Agent on behalf of the Term Creditors (and each Term Creditor by its acceptance of the benefits of the Term Security Documents) has agreed to the lien subordination, intercreditor and other provisions set forth in this Agreement;

WHEREAS, in order to induce the Term Collateral Agent and the Term Creditors to consent to the Grantors incurring the ABL Obligations and to induce the Term Creditors to extend credit and other financial accommodations and lend monies to or for the benefit of Douglas or any other Grantor, the ABL Collateral Agent on

behalf of the ABL Creditors (and each ABL Creditor by its acceptance of the benefits of the ABL Security Documents) has agreed to the lien subordination, intercreditor and other provisions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Defined Terms. As used in the Agreement, the following terms shall have the following meanings:

“ABL Administrative Agent” has the meaning set forth in the preamble hereto.

“ABL Banking Services Agreement” shall mean any Banking Services Agreement (as defined in the ABL Credit Agreement) entered into by a Grantor and any ABL Banking Services Provider (or any Person who was an ABL Banking Services Provider as of the date such Banking Services Agreement was entered into).

“ABL Banking Services Provider” shall mean, with respect to any Banking Services Agreement, any counterparty thereto that, at the time such Banking Services Agreement was entered into or as of the date of this Agreement, was an ABL Administrative Agent, ABL Collateral Agent or ABL Lender or an Affiliate of an ABL Administrative Agent, ABL Collateral Agent or ABL Lender.

“ABL Banking Services Obligations” of the Grantors means any and all obligations of the Grantors, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor and the payment of interest and other amounts that would

2

accrue and become due but for the commencement of any Insolvency or Liquidation Proceeding at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such Insolvency or Liquidation Proceeding) in connection with Banking Services Agreement (as defined in the ABL Credit Agreement).

“ABL Borrower” shall mean collectively, Douglas, DD Finance and Fisher, as borrowers under the ABL Credit Agreement.

“ABL Collateral Agent” has the meaning provided in the Preamble hereto.

“ABL Credit Agreement” has the meaning set forth in the recitals hereto.

“ABL Creditor Post-Petition Financing” has the meaning set forth in Section 6.1(a)(i) hereto.

“ABL Creditors” shall mean, at any relevant time, the holders of ABL Obligations at such time, including, without limitation, the ABL Lenders, the ABL Banking Services Providers, the ABL Hedge Providers, the ABL Collateral Agent, the ABL Administrative Agent and the other agents under the ABL Credit Agreement.

“ABL Documents” shall mean and include the ABL Loan Documents, the ABL Banking Services Agreements, and the ABL Hedge Agreements.

“ABL Guaranty” means the guaranty pursuant to Section VII of the ABL Credit Agreement.

“ABL Hedge Agreement” shall mean any Hedge Agreement (as defined in the ABL Credit Agreement) entered into by a Grantor and any ABL Hedge Provider (or any Person who was an ABL Hedge Provider as of the date such Hedge Agreement was entered into).

“ABL Hedge Provider” shall mean, with respect to any Hedge Agreement, any counterparty thereto that, at the time such Hedge Agreement was entered into or as of the date of this Agreement, was an ABL Administrative Agent, ABL Collateral Agent or ABL Lender or an Affiliate of an ABL Administrative Agent, ABL Collateral Agent or ABL Lender.

“ABL Hedging Obligations” shall mean (i) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due) and liabilities (including, without limitation, indemnities, fees and interest thereon and including the payment of interest and other amounts that would accrue and become due but for the commencement of any Insolvency or Liquidation Proceeding at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such Insolvency or Liquidation Proceeding) of each Grantor owing to the ABL Hedge Providers, now existing or hereafter incurred under, arising out of or in connection with each ABL Hedge Agreement (including all such obligations and indebtedness under any guarantee to which each Grantor is a party) and (ii) the due performance and compliance by each Grantor with the terms, conditions and agreements of each ABL Hedge Agreement.

3

“ABL Lenders” shall mean the “Lenders” under, and as defined in, the ABL Credit Agreement; provided that the term “ABL Lender” shall in any event include each letter of credit issuer and each swingline lender under the ABL Credit Agreement.

“ABL Loan Commitments” shall mean the loan commitments under the ABL Credit Agreement.

“ABL Loan Documents” shall mean the ABL Credit Agreement and the Credit Documents (as defined in the ABL Credit Agreement) and each of the other agreements, documents and instruments executed or delivered at any time in connection therewith (including any intercreditor or joinder agreement among holders of ABL Obligations but excluding ABL Hedge Agreements), to the extent such are effective at the relevant time, as each may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

“ABL Mortgages” shall mean a collective reference to each mortgage, deed of trust and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any ABL Obligations or under which rights or remedies with respect to any such Liens are governed.

“ABL Obligations” shall mean (i) all Obligations outstanding under the ABL Credit Agreement and the other ABL Loan Documents, (ii) all ABL Hedging Obligations and (iii) all ABL Banking Services Obligations. “ABL Obligations” shall in any event include: (a) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding (and the effect of provisions such as Section 502(b)(2) of the Bankruptcy Code), accrue) after commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant ABL Document, whether or not the claim for such interest is allowed as a claim

in such Insolvency or Liquidation Proceeding, (b) any and all fees and expenses (including attorneys' and/or financial consultants' fees and expenses) incurred by the ABL Collateral Agent, the ABL Administrative Agent and the ABL Creditors after the commencement of an Insolvency or Liquidation Proceeding, whether or not the claim for fees and expenses is allowed under Section 506(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or Bankruptcy Law as a claim in such Insolvency or Liquidation Proceeding and (c) all obligations and liabilities of each Grantor under each ABL Document to which it is a party which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due. The ABL Obligations shall not include (x) principal of Loans or stated amounts of Letters of Credit in excess of the Maximum ABL Principal Amount as in effect at the time incurred or (y) any amount in clauses (a) through (c) of the preceding sentence incurred in connection with the enforcement of the excess amounts referred to in preceding clause (x).

"ABL Priority Collateral" means all Collateral consisting of the following:

- (a) all Accounts;
- (b) all Inventory;

4

(c) all Deposit Accounts and Securities Accounts and all cash, checks and other property held therein or credited thereto (other than identifiable cash proceeds of Term Priority Collateral held therein);

(d) to the extent evidencing, governing, securing or otherwise related to the items referred to in the preceding clauses (a) through (c), all General Intangibles, Chattel Paper, Instruments, and Documents, provided that to the extent any of the foregoing also relates to Term Priority Collateral, only that portion related to the items referred to in the preceding clauses (a) through (c) shall be included in the ABL Priority Collateral;

(e) to the extent evidencing, governing, securing or otherwise related to the items referred to in the preceding clauses (a) through (d), all Supporting Obligations, provided that to the extent any of the foregoing also relates to Term Priority Collateral, only that portion related to the items referred to in the preceding clauses (a) through (d) shall be included in the ABL Priority Collateral;

(f) all books and records relating to the foregoing; and

(g) all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing.

All capitalized terms used in this definition and not defined elsewhere in this Agreement have the meanings assigned to them in the UCC.

"ABL Recovery" has the meaning set forth in Section 6.5(a) hereto.

"ABL Required Lenders" shall mean the "Requisite Lenders" under, and as defined in, the ABL Credit Agreement.

"ABL Secured Parties" shall mean, at any time, the ABL Collateral Agent, the ABL Administrative Agent, each ABL Creditor, the beneficiaries of each indemnification obligation undertaken by any Grantor under any ABL Document and each other holder of, or obligee in respect of, any ABL Obligations outstanding at such time.

"ABL Security Documents" shall mean the Collateral Documents (as defined in the ABL Credit Agreement), and any other agreement, document, mortgage or instrument pursuant to which a Lien is granted securing any ABL Obligations or under which rights or remedies with respect to such Liens are governed, as the same may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

"ABL Security Agreement" shall mean the Pledge and Security Agreement, dated as of the date hereof, among the Borrower, the other Grantors from time to time party thereto and the ABL Collateral Agent, as the same may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

5

"Affiliate" shall mean as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, or contract.

"Agreement" shall mean this Agreement, as amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

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

"Bankruptcy Court" has the meaning set forth in Section 6.1(a)(ii) hereto.

"Bankruptcy Law" shall mean, collectively, the Bankruptcy Code as now and hereafter in effect, or any successor statute, and any similar federal provincial, state or foreign law for the relief of debtors.

"Borrower" shall mean (a) with respect to each of the ABL Documents, the ABL Borrower, and (b) with respect to the Term Loan Documents, the Term Borrower.

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

"Collateral" shall mean all assets and properties upon which a Lien is granted or purported to be granted to the ABL Collateral Agent or Term Collateral Agent under any of the ABL Security Documents or Term Security Documents.

"Collateral Agent" means, as the context requires, collectively, the ABL Collateral Agent and/or the Term Collateral Agent.

"Comparable ABL Security Document" shall mean, in relation to any ABL Priority Collateral subject to any Lien created under any Term Security Document, that ABL Security Document which creates a Lien on the same ABL Priority Collateral, granted by the same Grantor.

“Comparable Term Security Document” shall mean, in relation to any ABL Priority Collateral subject to any Lien created under any ABL Security Document, that Term Security Document which creates a Lien on the same ABL Priority Collateral, granted by the same Grantor.

“Creditors” shall mean, collectively, the ABL Creditors and the Term Creditors.

“Credit Suisse” has the meaning set forth in the preamble hereto.

“DD Finance” has the meaning set forth in the preamble hereto.

6

“Discharge of ABL Obligations” shall mean, except to the extent otherwise provided in Section 5.7 (and subject to Section 6.5), (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the ABL Documents, (b) payment in full of all other ABL Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest and premium, if any, are paid, (c) expiration, cancellation (without any prior demand for payment thereunder having been made or, if made, with such demand having been fully reimbursed in cash), cash collateralization or backstopping with a letter of credit reasonably acceptable to the Issuing Lender (in this case, as such term is defined in the ABL Credit Agreement) of all letters of credit issued under the ABL Credit Agreement and cash collateralization of any Grantor’s net obligation under ABL Hedge Agreements (to the extent required thereby with notification by the relevant ABL Hedge Providers to the ABL Collateral Agent) and (d) termination of all other commitments of the ABL Creditors under the ABL Loan Documents.

“Discharge of Term Obligations” shall mean, except to the extent otherwise provided in Section 5.7 (and subject to Section 6.5), (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the Term Loan Documents, (b) payment in full of all other Term Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest and premium, if any, are paid and (c) termination of all other commitments of the Term Creditors under the Term Loan Documents.

“Documents” shall mean, as the context requires, collectively, the ABL Documents and the Term Loan Documents.

“Douglas” has the meaning set forth in the preamble hereto.

“Equity Interests” of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interest in (however designated, whether voting or nonvoting) equity of such Person, including any common stock, preferred stock, any limited or general partnership interest and any limited liability company membership interest and any and all warrants, rights or options to purchase any of the foregoing.

“Exposure Amount” shall mean, with respect to any ABL Creditor Post-Petition Financing or Term Creditor Post-Petition Financing, the sum of (without duplication) (i) the aggregate principal amount of the commitments thereunder, (ii) any principal amount (for this purpose, including the maximum undrawn amounts of any then outstanding letters of credit and the aggregate amount of unpaid outstanding reimbursement obligations related thereto, and excluding all ABL Hedging Obligations and ABL Banking Services Obligations) outstanding pursuant to the ABL Credit Agreement as of the commencement of the relevant Insolvency or Liquidation Proceeding, and (iii) the aggregate principal amount of Term Obligations as of the commencement of such Insolvency or Liquidation Proceeding.

7

“Fisher” has the meaning set forth in the preamble hereto.

“Governmental Authority” shall mean any nation or government, any state, provincial or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Grantors” shall mean Holdings, the ABL Borrower, the Term Borrower and each of the Subsidiary Guarantors that have executed and delivered, or may from time to time hereafter execute and deliver, an ABL Security Document or a Term Security Document.

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

“Holdings” has the meaning set forth in the preamble hereto.

“Indebtedness” shall mean and includes all Obligations that constitute “Indebtedness” within the meaning of the ABL Credit Agreement or the Term Credit Agreement.

“Insolvency or Liquidation Proceeding” shall mean (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other Bankruptcy Law or any other Bankruptcy Law with respect to any Grantor, (b) any other voluntary or involuntary insolvency, reorganization, arrangement or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, arrangement or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its respective assets, (c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Grantor.

“Letters of Credit” shall mean “Letters of Credit” under, and as defined in, the ABL Credit Agreement.

“Lien” shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC or any similar recording or notice statute, and any lease having substantially the same effect as the foregoing).

“Loans” shall mean “Loans” under, and as defined in, the ABL Credit Agreement.

8

“Maximum ABL Principal Amount” shall mean, at any time, (i) \$90,000,000, 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, less (iii) the aggregate principal amount of Additional Term Loans (as defined in the Term Credit Agreement) made under the Term Credit Agreement, plus (iv) for the avoidance of doubt and without duplication, the aggregate principal amount of any interest that has been capitalized under the ABL Credit Agreement.

“Maximum Exposure Amount” shall mean, with respect to any ABL Creditor Post-Petition Financing or Term Creditor Post-Petition Financing, the sum of (i) the portion of the Maximum ABL Principal Amount outstanding as of the commencement of the relevant Insolvency or Liquidation Proceeding, (ii) the portion of the Maximum Term Principal Amount as of the commencement of such Insolvency or Liquidation Proceeding and (iii) \$40,000,000.

“Maximum Term Principal Amount” shall mean, at any time, (i) \$115,000,000, 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, less (iii) the aggregate principal amount of Additional Revolving Loan Commitments (as defined in the ABL Credit Agreement) made under the Term Credit Agreement, plus (iv) for the avoidance of doubt and without duplication, the aggregate principal amount of any interest that has been capitalized under the Term Credit Agreement.

“New ABL Agent” has the meaning set forth in Section 5.7(a) hereto.

“New Term Agent” has the meaning set forth in Section 5.7(b) hereto.

“Obligations” shall mean any and all obligations (including guaranty obligations) with respect to the payment and performance of (a) any principal or interest or premium on any indebtedness, including, without limitation, any reimbursement obligation in respect of any letter of credit, or any other liability, including the payment of interest and other amounts that would accrue and become due but for the commencement of any Insolvency or Liquidation Proceeding of any Grantor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such Insolvency or Liquidation Proceeding, (b) any fees, indemnification obligations, expense reimbursement obligations or other liabilities payable under the documentation governing any indebtedness (including, without limitation, the retaking, holding, selling or otherwise disposing of or realizing on the Collateral), (c) any obligation to post cash collateral in respect of letters of credit or any other obligations, and (d) all performance obligations under the documentation governing any indebtedness.

“Person” shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Refinancing” shall mean,

(a) in respect of any Indebtedness and/or, if any, commitments to extend credit under the ABL Credit Agreement, any refinancing, extension, renewal, defeasance,

9

restructuring, replacement or refunding of loans and/or, if any, commitments under the ABL Credit Agreement, to the extent the aggregate principal amount of loans and commitments made in connection with such refinancing, extension, renewal, defeasance, restructuring, replacement or refunding does not exceed the Maximum ABL Principal Amount; provided that any such refinancing, extension, renewal, defeasance, restructuring, replacement or refunding (and the Indebtedness resulting therefrom) does not (i) contravene the provisions of this Agreement (and the holders of such refinancing Indebtedness, or an agent on their behalf, have agreed to be bound by the terms hereof), (ii) result in the increase in the “Applicable Margin” or similar component of the interest or the yield on the loans thereunder by more than 1.5% per annum (exclusive, for the avoidance of doubt, of any increases (A) resulting from application of the pricing grid set forth in the ABL Credit Agreement as in effect on the date hereof or (B) resulting from the accrual of interest at the default rate), (iii) provide for dates for payment of principal, interest, premium (if any) or fees which are earlier than such dates under the ABL Credit Agreement, or (iv) convert the ABL Credit Agreement to, or refinance the ABL Credit Agreement with, a term loan credit facility or a revolving credit facility the availability of which is not subject to a borrowing base comprised of accounts receivable and inventory.

(b) in respect of any Indebtedness and/or, if any, commitments to extend credit under the Term Credit Agreement, any refinancing, extension, renewal, defeasance, restructuring, replacement or refunding of loans and/or, if any, commitments under the Term Credit Agreement, to the extent the aggregate principal amount of loans and commitments made in connection with such refinancing, extension, renewal, defeasance, restructuring, replacement or refunding does not exceed the Maximum Term Principal Amount; provided that any such refinancing, extension, renewal, defeasance, restructuring, replacement or refunding (and the Indebtedness resulting therefrom) does not (i) contravene the provisions of this Agreement (and the holders of such refinancing Indebtedness, or an agent on their behalf, have agreed to be bound by the terms hereof), (ii) result in an increase in the “Applicable Margin” or similar component of the interest yield of such refinancing Indebtedness which is more than 3.0% per annum above the “Applicable Margin” or similar component under the Term Credit Agreement as of the date hereof (excluding increases resulting from the accrual of interest at the default rate); and (iii) change (to earlier dates) any dates upon which payments of principal or interest are due thereon.

With respect to clause (a), the Term Administrative Agent shall be provided with written notice by the Borrower that the Obligations arising from the refinancing, extension, renewal, defeasance, restructuring, replacement or refunding referenced in clause (a) are intended to constitute ABL Obligations hereunder (it being understood that the failure of any such notice to be given shall not impair or affect the Term Administrative Agent’s or the Term Creditor’s obligations to the ABL Administrative Agent and the ABL Creditors, the ABL Administrative Agent’s rights hereunder, the enforceability of this Agreement or any liens created or granted hereby or under any ABL Loan Document). With respect to clause (b), the ABL Administrative Agent shall be provided with written notice that the Obligations arising from the refinancing, extension, renewal, defeasance, restructuring, replacement or refunding referenced in clause (b) are intended to constitute Term Obligations hereunder (it being understood that the failure of any such notice to be given shall not impair or affect the ABL Administrative Agent’s or any ABL Creditor’s obligations to the Term Administrative Agent and the Term Creditors, the Term

10

Administrative Agent’s rights hereunder, the enforceability of this Agreement or any liens created or granted hereby or under any Term Document).

“Required ABL Creditors” shall mean at all times prior to the occurrence of the Discharge of ABL Obligations, the ABL Required Lenders (or, to the extent required by the ABL Credit Agreement, each of the ABL Lenders).

“Required Term Creditors” shall mean at all times prior to the occurrence of the Discharge of Term Obligations, the Term Required Lenders (or, to the extent required by the Term Credit Agreement, each of the Term Lenders).

“Security Documents” shall mean, collectively, the ABL Security Documents and the Term Security Documents.

“Subsidiary Guarantors” shall mean each Subsidiary of Holdings which enters into a guaranty of any ABL Obligations or Term Obligations.

“Subsidiary” shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other Equity Interests having ordinary voting power (other than stock or such other Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Term Administrative Agent” has the meaning set forth in the preamble hereto.

“Term Borrower” has the meaning set forth in the preamble hereto.

“Term Collateral Agent” has the meaning provided in the first paragraph of this Agreement.

“Term Credit Agreement” has the meaning set forth in the recitals hereto.

“Term Creditor Post-Petition Financing” has the meaning set forth in Section 6.1(b)(i) hereto.

“Term Creditors” shall mean, at any relevant time, the holders of Term Obligations at such time, including without limitation the Term Lenders, the Term Collateral Agent, the Term Administrative Agent and any other agents under the Term Credit Agreement.

“Term Lenders” shall mean the “Lenders” under and as defined in the Term Credit Agreement.

11

“Term Loan Documents” shall mean the Term Credit Agreement and the other Credit Documents (as defined in the Term Credit Agreement) and each of the other agreements, documents and instruments executed or delivered at any time in connection therewith (including any intercreditor or joinder agreement among holders of Term Obligations), to the extent such are effective at the relevant time, as the same may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

“Term Obligations” shall mean all Obligations outstanding under the Term Credit Agreement and the other Term Loan Documents. “Term Obligations” shall in any event include: (a) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding (and the effect of provisions such as Section 502(b)(2) of the Bankruptcy Code), accrue) after commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Term Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding and (b) any and all fees and expenses (including attorneys’ and/or financial consultants’ fees and expenses) incurred by the Term Collateral Agent, the Term Administrative Agent and the Term Creditors after the commencement of an Insolvency or Liquidation Proceeding, whether or not the claim for fees and expenses is allowed under Section 506(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or Bankruptcy Law as a claim in such Insolvency or Liquidation Proceeding. The Term Obligations shall not include (x) principal in excess of the Maximum Term Principal Amount or (y) any amount in clauses (a) through (c) of the preceding sentence incurred in connection with the enforcement of the excess amounts referred to in preceding clause (x).

“Term Priority Collateral” shall mean any and all Collateral, other than the ABL Priority Collateral.

“Term Recovery” has the meaning set forth in Section 6.5(b) hereto.

“Term Required Lenders” shall mean the “Requisite Lenders” under, and as defined in, the Term Credit Agreement.

“Term Secured Parties” shall mean, at any time, the Term Collateral Agent, the Term Administrative Agent, each Term Creditor, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Term Document and each other holder of, or obligee in respect of, any Term Obligations outstanding at such time.

“Term Security Documents” shall mean the Collateral Documents (as defined in the Term Credit Agreement), and any other agreement, document, mortgage or instrument pursuant to which a Lien is granted securing any Term Obligations or under which rights or remedies with respect to such Liens are governed, as the same may be amended, supplemented, restated, modified and/or replaced from time to time in accordance with the terms hereof and thereof.

“Term Security Agreement” shall mean the Pledge and Security Agreement, dated as of the date hereof, among the Borrower, the other Grantors from time to time party thereto and the Term Collateral Agent, as the same may be amended, supplemented, restated, modified

12

and/or replaced from time to time or otherwise modified from time to time in accordance with the terms hereof and thereof.

“Term Guaranty” shall mean the guaranty pursuant to Section VII of the Term Credit Agreement.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York.

SECTION 1.2 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Exhibits or Sections shall be construed to refer to Exhibits or Sections of this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (f) terms defined in the UCC but not otherwise defined herein shall have the same meanings herein as are assigned thereto in the UCC, (g) reference to any law means such law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect on the date hereof, including rules, regulations, enforcement procedures and any interpretations promulgated thereunder and (h) underscored references to Sections or clauses shall refer to those portions of this Agreement, and any underscored references to a clause shall, unless otherwise identified, refer to the appropriate clause within the same Section in which such reference occurs.

ARTICLE II

PRIORITY OF LIENS; ETC.

SECTION 2.1 Subordination of Liens; Etc. (a) ABL Priority Collateral. Notwithstanding the date, manner or order of grant, attachment or perfection of (x) any Liens securing the ABL Obligations granted on the ABL Priority Collateral or (y) any Liens securing the Term Obligations granted on the ABL Priority Collateral and notwithstanding any provision of the UCC, any other applicable law, the Term Loan Documents or any other circumstance whatsoever (including any invalidity or non-perfection of any Lien purporting to secure the ABL Obligations, and/or the Term Obligations), the Term Collateral Agent, on behalf of itself and the other Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) hereby agree that:

13

(i) any Lien on the ABL Priority Collateral securing any ABL Obligations now or hereafter held by or on behalf of the ABL Collateral Agent or any ABL Creditors or any agent or trustee thereof, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the ABL Priority Collateral securing any of the Term Obligations;

(ii) all Liens on the ABL Priority Collateral securing any ABL Obligations shall be and remain senior in all respects and prior to all Liens on the ABL Priority Collateral securing any Term Obligations, whether or not such Liens securing any ABL Obligations are subordinated to any Lien securing any other obligation of the Borrower, any other Grantor or any other Person;

(iii) it is their intent that (x) the ABL Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the Term Obligations (and the security therefor) and (y) the Term Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the ABL Obligations (and the security therefor).

(b) Term Priority Collateral. Notwithstanding the date, manner or order of grant, attachment or perfection of (x) any Liens securing the Term Obligations granted on the Term Priority Collateral or (y) any Liens securing the ABL Obligations granted on the Term Priority Collateral and notwithstanding any provision of the UCC, any other applicable law, the ABL Loan Documents or any other circumstance whatsoever (including any invalidity or non-perfection of any Lien purporting to secure the Term Obligations and/or the ABL Obligations), the ABL Collateral Agent, on behalf of itself and the other ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents) hereby agree that:

(i) any Lien on the Term Priority Collateral securing any Term Obligations now or hereafter held by or on behalf of the Term Collateral Agent or any Term Creditors or any agent or trustee thereof, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Term Priority Collateral securing any of the ABL Obligations;

(ii) all Liens on the Term Priority Collateral securing any Term Obligations shall be and remain senior in all respects and prior to all Liens on the Term Priority Collateral securing any ABL Obligations for all purposes, whether or not such Liens securing any Term Obligations are subordinated to any Lien securing any other obligation of the Borrower, any other Grantor or any other Person;

(iii) it is their intent that (x) the Term Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the ABL Obligations (and the security therefor) and (y) the ABL Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the Term Obligations (and the security therefor).

14

Notwithstanding anything to the contrary contained above or elsewhere in this Agreement, for all purposes of this Agreement (x) the ABL Obligations shall be deemed secured by Liens on all ABL Priority Collateral regardless of whether a Lien or security interest has in fact been granted (or purported to be granted) with respect thereto and (y) the Term Obligations shall be deemed secured by Liens on all Term Priority Collateral regardless of whether a Lien or security interest has in fact been granted (or purported to be granted) with respect thereto.

SECTION 2.2 Prohibition on Contesting Liens. The Term Collateral Agent, for itself and on behalf of each Term Creditor, and the ABL Collateral Agent, for itself and on behalf of each ABL Creditor, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including, without limitation, any Insolvency or Liquidation Proceeding), (i) the validity or enforceability of any Security Document or any Obligation thereunder, (ii) the validity, perfection, priority or enforceability of the Liens, mortgages, assignments and security interests granted (or purported to be granted) pursuant to the Security Documents with respect to the ABL Obligations or the Term Obligations, or (iii) the relative rights and duties of the holders of the ABL Obligations and the Term Obligations granted and/or established in this Agreement or any other Security Document (to the extent not inconsistent with the terms of this Agreement) with respect to such Liens, mortgages, assignments, and security interests; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any Collateral Agent or any other Creditor to enforce this Agreement, including the priority of the Liens securing the respective Obligations as provided in Section 2.1.

SECTION 2.3 No New Liens. (a) ABL Obligation — ABL Priority Collateral. So long as the Discharge of ABL Obligations has not occurred, the parties hereto agree that the Grantors shall not, and shall not permit any of their Subsidiaries to (i) grant or permit any additional Liens, or take any action to perfect any additional Liens, on any ABL Priority Collateral to secure any Term Obligation unless the Grantors and each such Subsidiary has become a Grantor hereunder and/or has also granted a Lien on such ABL Priority Collateral to secure the ABL Obligations in accordance with the relevant priority set forth in this Agreement or (ii) grant or permit any additional Liens, or take any action to perfect any additional Liens, on any ABL Priority Collateral to secure any ABL Obligation unless the Grantors and each such Subsidiary has become a Grantor hereunder and/or has also granted a Lien on such ABL Priority Collateral to secure the Term Obligations in accordance with the relevant priority set forth in this Agreement. To the extent that the forgoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the ABL Collateral Agent and/or the other ABL Creditors and the Term Collateral Agent and/or the other Term Creditors (in each case by its acceptance of the benefits of the respective Security Documents), each of the ABL Collateral Agent and Term Collateral Agent agrees that any amounts received by or distributed to any of them pursuant to or as a result of any liens granted in contravention of this Section 2.3(a) shall be subject to Section 4.2(a).

(b) Term Obligations — Term Priority Collateral. So long as the Discharge of Term Obligations has not occurred, the parties hereto agree that the Grantors shall not, and shall not permit any of their Subsidiaries to (i) grant or permit any additional Liens, or take any action to perfect any additional Liens, on any Term Priority Collateral to secure any ABL Obligation unless the Grantors and each such Subsidiary has become a Grantor hereunder and/or has also

15

granted a Lien on such Term Priority Collateral to secure the Term Obligations in accordance with the relevant priority set forth in this Agreement or (ii) grant or permit any additional Liens, or take any action to perfect any additional Liens, on any Term Priority Collateral to secure any Term Obligation unless the Grantors and each such Subsidiary has become a Grantor hereunder and/or has also granted a Lien on such Term Priority Collateral to secure the ABL Obligations in accordance with the relevant priority set forth in this Agreement. To the extent that the forgoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Term Collateral Agent and/or the other Term Creditors and the ABL Collateral Agent and/or the other ABL Creditors (in each case by its acceptance of the benefits of the respective Security Documents), each of the ABL Collateral Agent and Term Collateral Agent agrees that any amounts received by or distributed to any of them pursuant

to or as a result of any liens granted in contravention of this Section 2.3(b) shall be subject to Section 4.2(c).

SECTION 2.4 Similar Liens and Agreements. The parties hereto agree that it is their intention that the Collateral under the ABL Loan Documents and the Term Loan be identical. In furtherance of the foregoing and of Section 8.9, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by the ABL Collateral Agent or the Term Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Priority Collateral and the Term Priority Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Loan Documents and Term Loan Documents; and

(b) that the ABL Security Agreement and Term Security Agreement shall be substantially in the same forms (except for differences relating to the subordination of the Liens between the ABL Obligations and Term Obligations).

ARTICLE III

ENFORCEMENT

SECTION 3.1 Exercise of Remedies. (a) ABL Priority Collateral — No Contest by Term Creditors The provisions of this clause (a) are subject to clause (k) below. So long as the Discharge of ABL Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower or any other Grantor: (i) the Term Collateral Agent and the other Term Creditors will not exercise or seek to exercise any rights or remedies (including, without limitation, setoff) with respect to any ABL Priority Collateral (including, without limitation, the exercise of any right under any lockbox agreement, control account agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which any of the Term Collateral Agent or any Term Creditor is a party) or institute or commence, or join with any Person in commencing, any action or proceeding with respect to such rights or remedies (including, without limitation, any action of foreclosure, enforcement, collection or execution and any Insolvency or Liquidation Proceeding), and will not contest, protest or object to any foreclosure proceeding or action brought by the ABL Collateral Agent or

16

any ABL Creditor or any other exercise by the ABL Collateral Agent or any ABL Creditor, of any rights and remedies relating to the ABL Priority Collateral under the ABL Loan Documents or otherwise, or object to the forbearance by the ABL Collateral Agent or the ABL Creditors from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the ABL Priority Collateral; and (ii) the ABL Collateral Agent shall have the exclusive right, and the Required ABL Creditors shall have the exclusive right to instruct the ABL Collateral Agent, to enforce rights, exercise remedies (including, without limitation, set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the ABL Priority Collateral without any consultation with or the consent of any of the Term Collateral Agent or any Term Creditor, all as though the Term Obligations did not exist; provided, that (A) in any Insolvency or Liquidation Proceeding commenced by or against the Borrower or any Grantor, the Term Collateral Agent and, if applicable, each other Term Creditor may file a claim or statement of interest with respect to the Term Obligations, (B) the Term Collateral Agent may take any action (not adverse to the prior Liens on the ABL Priority Collateral securing the ABL Obligations, or the rights of the ABL Collateral Agent or the ABL Creditors to exercise remedies in respect thereof) in order to preserve or protect their respective Liens on the ABL Priority Collateral in accordance with the terms of this Agreement and (C) the Term Creditors shall be entitled to file any necessary responsive or defensive pleading in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Term Creditors. In exercising rights and remedies with respect to the ABL Priority Collateral, the ABL Collateral Agent and the ABL Creditors may enforce the provisions of the ABL Loan Documents and exercise rights and remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of ABL Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) Term Priority Collateral — No Contest by ABL Creditors The provisions of this clause (b) are subject to clause (n) below. So long as the Discharge of Term Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower or any other Grantor: (i) the ABL Collateral Agent and the other ABL Creditors will not exercise or seek to exercise any rights or remedies (including, without limitation, setoff) with respect to any Term Priority Collateral (including, without limitation, the exercise of any right under any lockbox agreement, control account agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which any of the ABL Collateral Agent or any ABL Creditor is a party) or institute or commence, or join with any Person in commencing, any action or proceeding with respect to such rights or remedies (including, without limitation, any action of foreclosure, enforcement, collection or execution and any Insolvency or Liquidation Proceeding), and will not contest, protest or object to any foreclosure proceeding or action brought by the Term Collateral Agent or any Term Creditor or any other exercise by the Term Collateral Agent or any Term Creditor, of any rights and remedies relating to the Term Priority Collateral under the Term Loan Documents or otherwise, or object to the forbearance by the Term Collateral Agent or the Term Creditors from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the

17

Term Priority Collateral; and (ii) the Term Collateral Agent shall have the exclusive right, and the Required Term Creditors shall have the exclusive right to instruct the Term Collateral Agent, to enforce rights, exercise remedies (including, without limitation, set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Term Priority Collateral without any consultation with or the consent of any of the ABL Collateral Agent or any ABL Creditor, all as though the ABL Obligations did not exist; provided, that in any Insolvency or Liquidation Proceeding commenced by or against the Borrower or any other Grantor, (A) the ABL Collateral Agent and, if applicable, each other ABL Creditor may file a claim or statement of interest with respect to the ABL Obligations, (B) the ABL Collateral Agent may take any action (not adverse to the prior Liens on the Term Priority Collateral securing the Term Obligations, or the rights of the Term Collateral Agent or the Term Creditors to exercise remedies in respect thereof) in order to preserve or protect their respective Liens on the Term Priority Collateral in accordance with the terms of this Agreement and (C) the ABL Creditors shall be entitled to file any necessary responsive or defensive pleading in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the ABL Creditors, including any claim secured by the Term Priority Collateral, if any, in each case in accordance with the terms of this Agreement. In exercising rights and remedies with respect to the Term Priority Collateral, the Term Collateral Agent and the Term Creditors may enforce the provisions of the Term Loan Documents and exercise rights and remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Term Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(c) [RESERVED]

(d) [RESERVED]

(e) Receipt of ABL Priority Collateral by Term Creditors The Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) agree that it will not take or receive any ABL Priority Collateral or any proceeds of ABL Priority Collateral in connection with the exercise of any right or remedy (including, without limitation; setoff) with respect to any ABL Priority Collateral, unless and until the Discharge of ABL Obligations has occurred. Without limiting the generality of the foregoing, unless and until the Discharge of ABL Obligations has occurred, the sole right

of the Term Collateral Agent and the Term Creditors with respect to the ABL Priority Collateral is to hold a Lien on the ABL Priority Collateral pursuant to the Term Security Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of the ABL Obligations has occurred in accordance with the terms of Article IV hereof, the Term Loan Documents and applicable law.

(f) Receipt of Term Priority Collateral by ABL Creditors The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents) agree that it will not take or receive any

18

Term Priority Collateral or any proceeds of Term Priority Collateral in connection with the exercise of any right or remedy (including, without limitation, setoff) with respect to any Term Priority Collateral, unless and until the Discharge of Term Obligations has occurred. Without limiting the generality of the foregoing, unless and until the Discharge of Term Obligations has occurred, the sole right of the ABL Collateral Agent and the ABL Creditors with respect to the Term Priority Collateral is to hold a Lien on the Term Priority Collateral pursuant to the ABL Security Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of the Term Obligations has occurred in accordance with the terms of Article IV hereof, the ABL Loan Documents and applicable law.

(g) ABL Priority Collateral — Term Creditor Waiver (i) The Term Collateral Agent, for itself and on behalf of the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), with respect to the ABL Priority Collateral, (x) agrees that the Term Collateral Agent and the other Term Creditors will not take any action that would hinder, delay, limit or prohibit any exercise of remedies under the ABL Loan Documents, including any collection, sale, lease, exchange, transfer or other disposition of the ABL Priority Collateral, whether by foreclosure or otherwise, or that would limit, invalidate, avoid or set aside any Lien or ABL Security Document or subordinate the priority of the ABL Obligations to the Term Obligations or grant the Liens securing the Term Obligations equal ranking to the Liens securing the ABL Obligations and (y) hereby waives any and all rights it or the Term Creditors may have as a junior lien creditor or otherwise (whether arising under the UCC or under any other law) to object to the manner in which the ABL Collateral Agent or the ABL Creditors seek to enforce or collect the ABL Obligations or the Liens granted in any of the ABL Priority Collateral, regardless of whether any action or failure to act by or on behalf of the ABL Collateral Agent or ABL Creditors is adverse to the interests of the Term Creditors.

(ii) The Term Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Term Security Documents or any other Term Loan Document shall be deemed to restrict in any way the rights and remedies of the ABL Collateral Agent or the ABL Creditors with respect to the ABL Priority Collateral as set forth in this Agreement.

(h) Term Priority Collateral — ABL Creditor Waiver (i) The ABL Collateral Agent, for itself and on behalf of the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), with respect to the Term Priority Collateral, (x) agrees that the ABL Collateral Agent and the other ABL Creditors will not take any action that would hinder, delay, limit or prohibit any exercise of remedies under the Term Loan Documents, including any collection, sale, lease, exchange, transfer or other disposition of the Term Priority Collateral, whether by foreclosure or otherwise, or that would limit, invalidate, avoid or set aside any Lien or Term Security Document or subordinate the priority of the Term Obligations to the ABL Obligations or grant the Liens securing the ABL Obligations equal ranking to the Liens securing the Term Obligations and (y) hereby waives any and all rights it or the ABL Creditors may have as a junior lien creditor or otherwise (whether arising under the UCC or under any other law) to object to the manner in which the Term Collateral Agent or the Term Creditors seek to enforce or collect the Term Obligations or the Liens granted in any of the Term Priority Collateral, regardless of whether any action or failure to act by or on behalf of the Term Collateral Agent or Term Creditors is adverse to the interests of the ABL Creditors.

19

(ii) The ABL Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the ABL Security Documents or any other ABL Loan Document shall be deemed to restrict in any way the rights and remedies of the Term Collateral Agent or the Term Creditors with respect to the Term Priority Collateral as set forth in this Agreement.

(i) [RESERVED]

(j) [RESERVED]

(k) ABL Priority Collateral — Term Creditor Rights Notwithstanding anything to the contrary in Section 3.1(a) through (h), with respect to the ABL Priority Collateral, at any time while a payment default exists with respect to the Term Obligations following the final maturity of the Term Obligations, or the acceleration by the relevant Term Creditors of the maturity of all then outstanding Term Obligations, and in either case so long as 120 days have elapsed after notice thereof (and requesting that enforcement action be taken with respect to the ABL Priority Collateral) has been received by the ABL Collateral Agent and so long as the respective payment default shall not have been cured or waived (or the respective acceleration rescinded), the Term Collateral Agent, for itself and on behalf of the Term Creditors, and the other Term Creditors may, but only if the ABL Collateral Agent or the ABL Creditors are not pursuing enforcement proceedings with respect to the ABL Priority Collateral in a commercially reasonable manner (with any determination of which ABL Priority Collateral to proceed against, and in what order, to be made by the ABL Collateral Agent or such ABL Creditors in their reasonable judgment), enforce the Liens on ABL Priority Collateral granted pursuant to the Term Security Documents, provided that (x) any ABL Priority Collateral or any proceeds of ABL Priority Collateral received by the Term Collateral Agent or such other Term Creditor, as the case may be, in connection with the enforcement of such Lien (net of reasonable costs actually incurred in connection with such enforcement) shall be applied in accordance with the following Article IV hereof and (y) the ABL Collateral Agent or any other ABL Creditors may at any time take over such enforcement proceedings, provided that the ABL Collateral Agent or such ABL Creditors, as the case may be, pursues enforcement proceedings in respect of the ABL Priority Collateral in a commercially reasonable manner, with any determination of which ABL Priority Collateral to proceed against, and in what order, to be made by the ABL Collateral Agent or such ABL Creditors in their reasonable judgment, and provided, further that the Term Collateral Agent or Term Creditors, as the case may be, shall only be able to recoup (from amounts realized by the ABL Collateral Agent or any ABL Creditor(s) in any enforcement proceeding with respect to the ABL Priority Collateral (whether initiated by the ABL Collateral Agent or ABL Creditor(s) or taken over by them as contemplated above) any expenses incurred by them in accordance with the priorities set forth in following Article IV.

(l) [RESERVED]

(m) [RESERVED]

(n) Term Priority Collateral — ABL Creditor Rights Notwithstanding anything to the contrary in Section 3.1(a) through (h) with respect to the Term Priority Collateral, at any time while a payment default exists with respect to the ABL Obligations following the

20

final maturity of the ABL Obligations, or the acceleration by the relevant ABL Creditors of the maturity of all then outstanding ABL Obligations, and in either case so long as 120 days have elapsed after notice thereof (and requesting that enforcement action be taken with respect to the Term Priority Collateral) has been received by the Term

Collateral Agent and so long as the respective payment default shall not have been cured or waived (or the respective acceleration rescinded), the ABL Collateral Agent, for itself and on behalf of the ABL Creditors, and the other ABL Creditors may, but only if the Term Collateral Agent or the Term Creditors are not pursuing enforcement preceding with respect to the Term Priority Collateral in a commercially reasonable manner (with any determination of which Term Priority Collateral to proceed against, and in what order, to be made by the Term Collateral Agent or such Term Creditors in their reasonable judgment), enforce the Liens on Term Priority Collateral granted pursuant to the ABL Security Documents, provided that (x) any Term Priority Collateral or any proceeds of Term Priority Collateral received by the ABL Collateral Agent or such other ABL Creditor, as the case may be, in connection with the enforcement of such Lien (net of reasonable costs actually incurred in connection with such enforcement) shall be applied in accordance with the following Article IV hereof and (y) the Term Collateral Agent or any other Term Creditors or may at any time take over such enforcement proceedings, provided that the Term Collateral Agent or such Term Creditors, as the case may be, pursues enforcement proceedings in respect of the Term Priority Collateral in a commercially reasonable manner, with any determination of which Term Priority Collateral to proceed against, and in what order, to be made by the Term Collateral Agent or such Term Creditors in their reasonable judgment, and provided, further that the ABL Collateral Agent or ABL Creditors, as the case may be, shall only be able to recoup (from amounts realized by the Term Collateral Agent or any Term Creditor(s)) in any enforcement proceeding with respect to the collateral (whether initiated by the Term Collateral Agent or Term Creditor(s), or taken over by them as contemplated above) any expenses incurred by them in accordance with the priorities set forth in following Article IV.

ARTICLE IV

PAYMENTS

SECTION 4.1 Application of Proceeds. (a) ABL Priority Collateral. So long as the Discharge of ABL Obligations has not occurred, any proceeds of any ABL Priority Collateral pursuant to the enforcement of any Security Document or the exercise of any remedial provision thereunder, together with all other proceeds received by any Creditor as a result of any such enforcement or the exercise of any such remedial provision or as a result of any distribution of or in respect of any ABL Priority Collateral (whether or not expressly characterized as such) upon or in any Insolvency or Liquidation Proceeding with respect to any Grantor, or the application of any Collateral (or proceeds thereof) to the payment thereof or any distribution of ABL Priority Collateral (or proceeds thereof) upon the liquidation or dissolution of any Grantor, shall be applied by the ABL Collateral Agent (or paid over to the ABL Collateral Agent and applied by it) to the ABL Obligations in such order as specified in the relevant ABL Loan Document. Upon the Discharge of the ABL Obligations and so long as Discharge of Term Obligations has not occurred, the ABL Collateral Agent shall deliver to the Term Collateral Agent any proceeds of ABL Priority Collateral held by it in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct.

21

(b) Term Priority Collateral. So long as the Discharge of Term Obligations has not occurred, any proceeds of any Term Priority Collateral pursuant to the enforcement of any Security Document or the exercise of any remedial provision thereunder, together with all other proceeds received by any Creditor as a result of any such enforcement or the exercise of any such remedial provision or as a result of any distribution of or in respect of any Term Priority Collateral (whether or not expressly characterized as such) upon or in any Insolvency or Liquidation Proceeding with respect to any Grantor, or the application of any Term Priority Collateral (or proceeds thereof) to the payment thereof or any distribution of Term Priority Collateral (or proceeds thereof) upon the liquidation or dissolution of any Grantor, shall be applied by the Term Collateral Agent (or paid over to the Term Collateral Agent and applied by it) to the Term Obligations in such order as specified in the relevant Term Loan Document. Upon the Discharge of the Term Obligations and so long as the Discharge of ABL Obligations has not occurred, the Term Collateral Agent shall deliver to the ABL Collateral Agent any proceeds of Term Priority Collateral held by it in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct.

SECTION 4.2 Payments Over. (a) ABL Priority Collateral. Until such time as the Discharge of ABL Obligations has occurred, any ABL Priority Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in the final sentence of Section 2.3(a)) (or any distribution in respect of the ABL Priority Collateral, whether or not expressly characterized as such) received by any of the Term Collateral Agent or any Term Creditors in connection with the exercise of any right or remedy (including set-off) relating to the ABL Priority Collateral or otherwise shall be segregated and held in trust and forthwith paid over to the ABL Collateral Agent for the benefit of the ABL Creditors in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The ABL Collateral Agent is hereby authorized to make any such endorsements as agent for any of the Term Collateral Agent or any such Term Creditors. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(b) [RESERVED]

(c) Term Priority Collateral. Until such time as the Discharge of Term Obligations has occurred, any Term Priority Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in the final sentence of Section 2.3(b)) (or any distribution in respect of the Term Priority Collateral, whether or not expressly characterized as such) received by the ABL Collateral Agent or any ABL Creditors in connection with the exercise of any right or remedy (including set-off) relating to the Term Priority Collateral or otherwise shall be segregated and held in trust and forthwith paid over to the Term Collateral Agent for the benefit of the Term Creditors in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Term Collateral Agent is hereby authorized to make any such endorsements as agent for the ABL Collateral Agent or any such ABL Creditors. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(d) [RESERVED]

22

ARTICLE V

OTHER AGREEMENTS

SECTION 5.1 Releases

(a) ABL Priority Collateral. If, in connection with:

(i) the exercise of the ABL Collateral Agent's remedies in respect of the ABL Priority Collateral provided for in Section 3.1, including any sale, lease, exchange, transfer or other disposition of any such ABL Priority Collateral; or

(ii) any sale, lease, exchange, transfer or other disposition of any ABL Priority Collateral permitted under the terms of the ABL Loan Documents and Term Loan Documents (in each case, as in effect on the date hereof and whether or not an "event of default" under any of such documents has occurred and is continuing),

there occurs the release by the ABL Collateral Agent, acting on its own or at the direction of the Required ABL Creditors, of any of its Liens on any part of the ABL Priority Collateral, or of any Grantor from its obligations under its guaranty of the ABL Obligations, then the Liens, if any, of the Term Collateral Agent, for itself and for the benefit of the Term Creditors and of any other Term Creditor, on such ABL Priority Collateral, and the obligations of such Grantor under its guaranties (if any) of the Term Obligations, shall be automatically, unconditionally and simultaneously released, and the Term Collateral Agent, for itself and on behalf of any such Term Creditors, promptly

shall execute and deliver to the ABL Collateral Agent or such Grantor such termination statements, releases and other documents as the ABL Collateral Agent or such Grantor may request to effectively confirm such release; provided, however that if an “event of default” then exists under the Term Credit Agreement and the Discharge of ABL Obligations occurs concurrently with the effectiveness of any such release, the Term Collateral Agent shall be entitled to receive the residual cash or cash equivalents (if any) remaining after giving effect to such release and the Discharge of the ABL Obligations for application in accordance with the provisions of Section 4 hereof.

(b) [RESERVED]

(c) [RESERVED]

(d) Term Priority Collateral. If, in connection with:

(i) the exercise of the Term Collateral Agent’s remedies in respect of the Term Priority Collateral provided for in Section 3.1, including any sale, lease, exchange, transfer or other disposition of any such Term Priority Collateral; or

(ii) any sale, lease, exchange, transfer or other disposition of any Term Priority Collateral permitted under the terms of the Term Loan Documents and ABL Loan Documents (in each case, as in effect on the Closing Date and whether or not an “event of default” under any of such documents has occurred and is continuing);

23

there occurs the release by the Term Collateral Agent, acting on its own or at the direction of the Required Term Creditors, of any of its Liens on any part of the Term Priority Collateral, or of any Grantor from its obligations under its guaranty of the Term Obligations, then the Liens, if any, of the ABL Collateral Agent, for itself and for the benefit of the ABL Creditors, and of any other ABL Creditor, on such Collateral, and the obligations of such Grantor under its guaranties (if any) of the ABL Obligations, shall be automatically, unconditionally and simultaneously released, and the ABL Collateral Agent, for itself and on behalf of any such ABL Creditors, promptly shall execute and deliver to the Term Collateral Agent or such Grantor such termination statements, releases and other documents as the Term Collateral Agent or such Grantor may request to effectively confirm such release; provided, however that if an “event of default” then exists under the ABL Credit Agreement and the Discharge of Term Obligations occurs concurrently with the effectiveness of any such release, the ABL Collateral Agent shall be entitled to receive the residual cash or cash equivalents (if any) remaining after giving effect to such release and the Discharge of the Term Obligations for application in accordance with the provisions of Section 4 hereof.

(e) [RESERVED]

(f) [RESERVED]

SECTION 5.2 Insurance - ABL Priority Collateral. (a) Unless and until the Discharge of ABL Obligations has occurred, the ABL Collateral Agent (acting at the direction of the Required ABL Creditors) shall have the sole and exclusive right, as between the ABL Collateral Agent and the Term Collateral Agent, to adjust settlement under any insurance policy covering the ABL Priority Collateral in the event of any loss thereunder to the extent relating to the ABL Priority Collateral and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) to the extent relating to the ABL Priority Collateral. Unless and until the Discharge of ABL Obligations has occurred, and subject to the rights of the Grantors under the ABL Security Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) in respect to the ABL Priority Collateral shall be paid to the ABL Collateral Agent for the benefit of the ABL Creditors pursuant to the terms of the ABL Loan Documents (including, without limitation, for purposes of cash collateralization of ABL Obligations consisting of commitments, letters of credit and ABL Hedge Agreements (to the extent required thereby with notification by the relevant ABL Hedge Provider to the ABL Collateral Agent)) and, after the Discharge of ABL Obligations has occurred, to the Term Collateral Agent for the benefit of the Term Creditors to the extent required under the Term Security Documents, and then, to the extent no Term Obligations are outstanding, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If either the Term Collateral Agent or any Term Creditors shall, at any time prior to the Discharge of ABL Obligations, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, it shall pay such proceeds over to the ABL Collateral Agent.

(b) Term Priority Collateral. Unless and until the Discharge of Term Obligations has occurred, the Term Collateral Agent (acting at the direction of the Required Term Creditors) shall have the sole and exclusive right, as between the Term Collateral Agent and the ABL Collateral Agent, to adjust settlement under any insurance policy covering the

24

Term Priority Collateral in the event of any loss thereunder to the extent relating to the ABL Priority Collateral and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) to the extent relating to the Term Priority Collateral. Unless and until the Discharge of Term Obligations has occurred, and subject to the rights of the Grantors under the Term Security Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) in respect to the Term Priority Collateral shall be paid to the Term Collateral Agent for the benefit of the Term Creditors pursuant to the terms of the Term Loan Documents (including, without limitation, for purposes of cash collateralization of Term Obligations consisting of commitments and letters of credit) and, after the Discharge of Term Obligations has occurred, to the ABL Collateral Agent for the benefit of the ABL Creditors to the extent required under the ABL Security Documents and then, to the extent no ABL Obligations are outstanding, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If either the ABL Collateral Agent or any ABL Creditors shall, at any time prior to the Discharge of Term Obligations, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, it shall pay such proceeds over to the Term Collateral Agent.

SECTION 5.3 Amendments to Credit Documents

(a) Amendments to ABL Loan Documents. Without the prior written consent of the Required Term Lenders, no ABL Loan Document may be amended, supplemented or otherwise modified to the extent such amendment, supplement or modification would (i) increase the then outstanding aggregate principal amount of the loans, letters of credit and reimbursement obligations under the ABL Credit Agreement plus, if any, any undrawn portion of any commitment under the ABL Credit Agreement in excess of the Maximum ABL Principal Amount, (ii) contravene the provisions of this Agreement, (iii) increase the “Applicable Margin” or similar component of the interest or the yield on the loans thereunder by more than 1.5% per annum (exclusive, for the avoidance of doubt, of any (A) increases resulting from application of the pricing grid set forth in the ABL Credit Agreement as of the date hereof or (B) increases of up to 2.0% resulting from the accrual of interest at the default rate), (iv) provide for scheduled dates for payment of principal, interest, premium (if any) or fees which are earlier than such dates under the ABL Credit Agreement, or (v) convert the ABL Credit Agreement to, or refinance the ABL Credit Agreement with, a term loan credit facility or a revolving credit facility the availability of which is not subject to a borrowing base comprised of accounts receivable and inventory.

(b) Amendments to Term Loan Documents. Without the prior written consent of the Required ABL Lenders, no Term Loan Document may be amended, supplemented or otherwise modified to the extent such amendment, supplement or modification would (i) contravene the provisions of this Agreement, (ii) increase the then outstanding aggregate principal amount of the loans under the Term Credit Agreement in excess of the Maximum Term Principal Amount, (iii) increase the “Applicable Margin” or similar component of the interest yield of the loans thereunder by more than 3.0% per annum from the “Applicable Margin” or similar component under the Term Credit Agreement as in effect as of the date hereof (exclusive, for the avoidance of doubt, of (A) increases resulting from application of the pricing grid set

from the accrual of interest at the default rate) or (iv) provide for scheduled dates for payment of principal, interest, premiums (if any) or fees which are earlier than such dates under the Term Credit Agreement.

SECTION 5.4 Amendments to Security Documents (a) Amendments to Security Documents

(i) Without the prior written consent of the ABL Collateral Agent (acting at the direction of the Required ABL Creditors), no Term Security Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Term Security Document, would contravene the provisions of this Agreement or any ABL Loan Document.

(ii) Without the prior written consent of the Term Collateral Agent (acting at the direction of the Required Term Creditors), no ABL Security Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new ABL Security Document, would contravene the provisions of this Agreement.

(iii) [RESERVED]

(iv) Each Grantor and each ABL Creditor agrees that each ABL Security Document shall include the following language (or language of similar impact):

“Notwithstanding anything herein to the contrary, the lien and security interest granted to the ABL Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the ABL Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of May 21, 2007 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Intercreditor Agreement”), by and among Douglas Dynamics Company, L.L.C., Douglas Dynamics Holdings, Inc., Douglas Dynamics Finance Company and Fischer, LLC, the grantors from time to time party thereto, JPMorgan Chase Bank, N.A., as ABL Collateral Agent, and Credit Suisse, Cayman Island Branch, as Term Collateral Agent, and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.”

In addition, the Borrower agrees that each ABL Mortgage covering any Term Priority Collateral shall contain such other language as the Term Collateral Agent may reasonably request to reflect the subordination of such ABL Mortgage to the Term Security Document covering such Collateral.

(v) Each Grantor and each Term Creditor agrees that each Term Security Document shall include the following language (or language of similar impact):

“Notwithstanding anything herein to the contrary, the lien and security interest granted to the Term Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Term Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of May 21, 2007 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Intercreditor Agreement”), by and among Douglas Dynamics Company, L.L.C., Douglas Dynamics Holdings, Inc., Douglas Dynamics Finance Company and Fischer, LLC, the grantors from time to time party thereto, JPMorgan Chase Bank, N.A., as ABL Collateral Agent, and Credit Suisse, Cayman Island Branch, as Term Collateral Agent, and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.”

(b) Amendment to ABL Priority Collateral Security Documents With respect to the ABL Priority Collateral, in the event that, at any time prior to the Discharge of ABL Obligations, the ABL Collateral Agent or the ABL Creditors and the relevant Grantor(s) enter into any amendment, waiver or consent in respect of any of the ABL Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any ABL Security Document or changing in any manner the rights of the ABL Collateral Agent, the ABL Creditors, the Borrower or any other Grantor thereunder, then such amendment, waiver or consent shall apply automatically to any comparable provision of the Comparable Term Security Document without the consent of the Term Collateral Agent or the Term Creditors and without any action by the Term Collateral Agent, the Borrower or any other Grantor, provided, that (A) no such amendment, waiver or consent shall have the effect of (i) removing assets subject to the Lien of the Term Security Documents, except to the extent that a release of such Lien is permitted by Section 5.1 of this Agreement, (ii) imposing additional duties on the Term Collateral Agent without its consent, or (iii) permitting other liens on the ABL Priority Collateral not permitted under the terms of the Term Loan Documents or Article VI hereof and (B) notice of such amendment, waiver or consent shall have been given to the Term Collateral Agent (although the failure to give any such notice shall in no way affect the effectiveness of any such amendment, waiver or consent or impair or affect the Term Collateral Agent’s or any Term Creditor’s obligations to the ABL Collateral Agent and the ABL Lien Creditors).

(c) Amendment to Term Priority Collateral Security Documents With respect to the Term Priority Collateral, in the event that, at any time prior to the Discharge of Term Obligations, the Term Collateral Agent or the Term Creditors and the relevant Grantor(s) enter into any amendment, waiver or consent in respect of any of the Term Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any Term Security Document or changing in any manner the rights of the Term Collateral Agent, the Term Creditors, the Borrower or any other Grantor thereunder, then such amendment, waiver or consent shall apply automatically to any comparable provision of the Comparable ABL Security Document without the consent of the ABL Collateral Agent or the ABL Creditors and without any action by the ABL Collateral Agent, the Borrower or any other Grantor, provided, that (A) no such amendment, waiver or consent shall have the effect of (i) removing assets subject to the ABL Security Documents, except to the extent that a release of

such Lien is permitted by Section 5.1 of this Agreement, (ii) imposing additional duties on the ABL Collateral Agent without its consent, or (iii) permitting other liens on the Term Priority Collateral not permitted under the terms of the ABL Loan Documents, or Article VI hereof and (B) notice of such amendment, waiver or consent shall have been given to the ABL Collateral Agent (although the failure to give any such notice shall in no way affect the effectiveness of any such amendment, waiver or consent or impair or affect the ABL Collateral Agent’s or any ABL Creditor’s obligations to the Term Collateral Agent and the Term Creditors).

SECTION 5.5 Rights As Unsecured Creditors Except as otherwise set forth in this Agreement, the ABL Collateral Agent, the ABL Creditors, the Term Collateral Agent and the Term Creditors may exercise rights and remedies as unsecured creditors against Holdings, Borrower or any Grantor that has guaranteed (x) the ABL Obligations in accordance with the terms of the ABL Loan Documents and applicable law and/or (y) the Term Obligations in accordance with the terms of the Term Loan Documents and applicable law. Except as otherwise set forth in this Agreement nothing in this Agreement shall prohibit the receipt by (x) the ABL Collateral Agent or

any ABL Creditors of the required payments of interest and principal on the ABL Obligations or (y) the Term Collateral Agent or any Term Creditors of the required payments of interest and principal on the Term Obligations so long as such receipt is not the direct or indirect result of the exercise by the ABL Collateral Agent or any ABL Lien Creditor or the Term Collateral Agent or any Term Creditor of rights or remedies as a secured creditor (including set-off) or enforcement of any Lien held by any of them. In the event the Term Collateral Agent or any Term Creditor becomes a judgment lien creditor in respect of ABL Priority Collateral as a result of its enforcement of its rights as an unsecured creditor, such judgment lien shall be subordinated to the Liens securing ABL Obligations on the same basis as the other Liens securing the Term Obligations are so subordinated to the ABL Obligations under this Agreement. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the ABL Collateral Agent or the ABL Creditors may have with respect to the ABL Priority Collateral. In the event the ABL Collateral Agent or any ABL Creditor becomes a judgment lien creditor in respect of Term Priority Collateral as a result of its enforcement of its rights as an unsecured creditor, such judgment lien shall be subordinated to the Liens securing Term Obligations on the same basis as the other Liens securing the ABL Obligations, as the case may be, are so subordinated to the Term Obligations under this Agreement. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the Term Collateral Agent or the Term Creditors may have with respect to the Term Priority Collateral.

SECTION 5.6 Bailee for Perfection. (a) ABL Priority Collateral—Perfection of Security Interest. The ABL Collateral Agent agrees to acquire and acknowledges it holds any ABL Priority Collateral actually in its possession or control (or in the possession or control of its agents or bailees) on behalf of itself and the Term Collateral Agent and any assignee solely for the purpose of perfecting the security interest granted under the ABL Loan Documents and the Term Loan Documents, subject to the terms and conditions of this Section 5.6.

(b) ABL Priority Collateral — Exclusive Treatment. Until the Discharge of ABL Obligations has occurred, the ABL Collateral Agent shall be entitled to deal with the ABL Priority Collateral in accordance with the terms of the ABL Loan Documents as if the Liens of the Term Collateral Agent under the Term Security Documents did not exist. The rights of the Term Collateral Agent shall at all times be subject to the terms of this Agreement and, with

28

respect to the ABL Priority Collateral, to the ABL Collateral Agent's rights under the ABL Loan Documents.

(c) ABL Priority Collateral — Obligations of Collateral Agents. (i) The ABL Collateral Agent shall have no obligation whatsoever to the ABL Creditors, the Term Collateral Agent or any Term Creditor to assure that the ABL Priority Collateral is genuine or owned by any of the Grantors or to preserve any rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the ABL Collateral Agent under this Section 5.6 shall be limited solely to holding any ABL Priority Collateral actually in its possession or control as bailee in accordance with this Section 5.6.

(ii) After the Discharge of ABL Obligations has occurred, the Term Collateral Agent shall have no obligations whatsoever to the Term Creditors to assure that the ABL Priority Collateral is genuine or owned by any of the Grantors or to preserve any rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the Term Collateral Agent under this Section 5.6 shall be limited solely to holding any ABL Priority Collateral actually in its possession or control as bailee in accordance with this Section 5.6.

(d) ABL Priority Collateral — Delivery of Remaining ABL Priority Collateral. Upon the Discharge of ABL Obligations, the ABL Collateral Agent shall deliver the remaining ABL Priority Collateral (if any) (or proceeds thereof) in its possession, together with any necessary endorsements, (i) to the Term Collateral Agent, unless the Discharge of Term Obligations has occurred and (ii) if preceding clause (i) does not apply, to the relevant Grantor (in each case, so as to allow such Person to obtain control of such ABL Priority Collateral). The ABL Collateral Agent further agrees to take all other action reasonably requested by such Person in connection with such Person's obtaining a first-priority interest in the ABL Priority Collateral or as a court of competent jurisdiction may otherwise direct.

(e) Term Priority Collateral — Perfection of Security Interest. The Term Collateral Agent agrees to acquire and acknowledges it holds any Term Priority Collateral actually in its possession or control (or in the possession or control of its agents or bailees) on behalf of itself and any assignee and the ABL Collateral Agent and any assignee solely for the purpose of perfecting the security interest granted under the Term Loan Documents and the ABL Loan Documents, subject to the terms and conditions of this Section 5.6.

(f) Term Priority Collateral — Exclusive Treatment. Until the Discharge of Term Obligations has occurred, the Term Collateral Agent shall be entitled to deal with the Term Priority Collateral in accordance with the terms of the Term Loan Documents as if the Liens of the ABL Collateral Agent under the ABL Security Documents did not exist. The rights of the ABL Collateral Agent shall at all times be subject to the terms of this Agreement and, with respect to the Term Priority Collateral, to the Term Collateral Agent's rights under the Term Loan Documents.

(g) Term Priority Collateral—Obligations of Collateral Agents. (i) The Term Collateral Agent shall have no obligation whatsoever to the Term Creditors, the ABL Collateral Agent or any ABL Creditor to assure that the Term Priority Collateral is genuine or owned by

29

any of the Grantors or to preserve any rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the Term Collateral Agent under this Section 5.6 shall be limited solely to holding any Pledged Collateral and Term Priority Collateral actually in its possession or control as bailee in accordance with this Section 5.6.

(ii) After the Discharge of Term Obligations, the ABL Collateral Agent shall have no obligations whatsoever to the ABL Creditors to assure that the Term Priority Collateral is genuine or owned by any of the Grantors or to preserve any rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the ABL Collateral Agent under this Section 5.6 shall be limited solely to holding any Term Priority Collateral actually in its possession or control as bailee in accordance with this Section 5.6.

(h) Term Priority Collateral — Delivery of Remaining Collateral. Upon the Discharge of Term Obligations, the Term Collateral Agent shall deliver the remaining Term Priority Collateral (if any) (or proceeds thereof) in its possession, together with any necessary endorsements, (i) to the ABL Collateral Agent, unless the Discharge of ABL Obligations has occurred and (ii) if preceding clause (i) does not apply, to the relevant Grantor (in each case, so as to allow such Person to obtain control of such Term Priority Collateral). The Term Collateral Agent further agrees to take all other action reasonably requested by such Person in connection with such Person's obtaining a first-priority interest in the Term Priority Collateral or as a court of competent jurisdiction may otherwise direct.

(i) No Fiduciary Relationships. No Collateral Agent acting pursuant to this Section 5.6 shall have by reason of the ABL Security Documents, the Term Security Documents, this Agreement or any other document a fiduciary relationship in respect of any other Collateral Agent, any ABL Creditor or any Term Creditor.

SECTION 5.7 When Discharge of Obligations Deemed to Not Have Occurred. (a) ABL Priority Collateral. If the Borrower enters into any Refinancing of any ABL Loan Document evidencing an ABL Obligation, then any Discharge of ABL Obligations effected thereby shall automatically be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing ABL Loan Document shall automatically be treated as ABL Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of the ABL Priority Collateral and the Term Priority Collateral set forth herein, and the collateral agent under such ABL Loan Documents shall be the ABL Collateral Agent for all purposes of this Agreement. Upon receipt of a notice stating that the Borrower has entered into a new ABL Loan Document (which notice shall include the identity of the new agent, such agent, the "New ABL Agent"), the Term Collateral

Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Borrower or such New ABL Agent may reasonably request in order to provide to the New ABL Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. In addition, a Discharge of ABL Obligations shall be deemed not to have occurred in the circumstances described in Section 6.5.

(b) Term Priority Collateral. If the Borrower enters into any Refinancing of any Term Loan Document evidencing a Term Obligation, then any Discharge of Term

30

Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing Term Loan Document shall automatically be treated as Term Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of the ABL Priority Collateral and the Term Priority Collateral set forth herein, and the collateral agent under such Term Loan Documents shall be the Term Collateral Agent for all purposes of this Agreement. Upon receipt of a notice stating that the Borrower has entered into a new Term Loan Document in accordance with the foregoing requirements (which notice shall include the identity of the new agent, such agent, the "New Term Agent"), the ABL Collateral Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Borrower or such New Term Agent may reasonably request in order to provide to the New Term Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. In addition, a Discharge of Term Obligations shall be deemed not to have occurred in the circumstances described in Section 6.5.

SECTION 5.8 Option to Purchase. (a) Option to Purchase of Term Creditors. If all of the ABL Obligations shall have been accelerated or following the non-payment of the ABL Obligations after the Revolving Termination Date (as such term is defined in the ABL Credit Agreement), the Term Creditors shall have the option at any time upon at least five (5) Business Days' prior written notice by the Term Administrative Agent to the ABL Administrative Agent (with copies to the Borrower) to purchase all, and not less than all, of the ABL Obligations from the ABL Administrative Agent and the ABL Creditors. Such notice from the Term Administrative Agent to the ABL Administrative Agent shall be irrevocable.

(b) Option to Purchase of Term Creditors — Sale Without Consent. On the date specified by the Term Administrative Agent in the notice described in Section 5.8(a) (which shall not be less than five (5) Business Days, nor more than ten (10) Business Days, after the receipt by the ABL Administrative Agent of the notice from the Term Administrative Agent of the election by the Term Creditors to exercise such option), the ABL Administrative Agent and the ABL Creditors shall sell to the Term Creditors exercising such option, and such Term Creditors shall purchase from the ABL Administrative Agent and the ABL Creditors, the ABL Obligations without the prior written consent of the Borrower or any other Grantor.

(c) Option to Purchase of Term Creditors — Procedure. Upon the date of such purchase and sale, the Term Creditors that have exercised such option shall, pursuant to documentation in form and substance reasonably satisfactory to the ABL Administrative Agent, (i) pay to the ABL Creditors as the purchase price therefor the full amount of all the ABL Obligations then outstanding and unpaid (including principal, reimbursement obligations in respect of, if any, letters of credit, the credit exposure of the ABL Creditors under ABL Hedge Agreements, interest, fees and expenses, including reasonable attorneys' fees and legal expenses) at par, (ii) cash collateralize any letters of credit outstanding under the ABL Credit Agreement in an amount reasonably satisfactory to the ABL Agent but in no event greater than 103% of the aggregate undrawn face amount thereof, and (iii) agree to reimburse the ABL Administrative Agent and the ABL Creditors for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit as described above and any checks or other payments provisionally credited to the ABL Obligations, and/or as to which the ABL

31

Administrative Agent or any ABL Creditor has not yet received final payment. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the ABL Administrative Agent for the ratable account of the ABL Administrative Agent and the ABL Creditors in New York, New York, as the ABL Administrative Agent may designate in writing to the Term Administrative Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the Term Creditors that have exercised such option to the bank account designated by the ABL Administrative Agent are received in such bank account prior to 1:00 p.m., New York City time and interest shall be calculated to and including such Business Day if the amounts so paid by such Term Creditors to the bank account designated by the ABL Administrative Agent are received in such bank account later than 1:00 p.m., New York City time on such Business Day.

(d) Option to Purchase of Term Creditors — Without Recourse. Such purchase shall be expressly made without recourse, representation or warranty of any kind by the ABL Administrative Agent or any ABL Creditors as to the ABL Obligations owed to such Person or otherwise, except that each such Person shall represent and warrant: (i) the amount of the ABL Obligations being sold by it, (ii) that such Person has not created any Lien on any ABL Obligation being sold by it and (iii) that such Person has the right to assign ABL Obligations being assigned by it and its assignment is duly authorized.

(e) Option to Purchase of Term Creditors — Foreclosure. The ABL Administrative Agent agrees that prior to foreclosing upon all or a material portion of the ABL Priority Collateral, it will provide the Term Administrative Agent with at least five (5) days' notice of its intent to commence such foreclosure. If the Term Administrative Agent shall give the ABL Administrative Agent written notice of any Term Creditor's intention to exercise the purchase option provided under this Section 5.8 prior to the foreclosure by the ABL Administrative Agent on any ABL Priority Collateral, the ABL Administrative Agent shall not continue such foreclosure action or initiate any other action to sell or otherwise realize upon any of the ABL Priority Collateral so long as the purchase and sale with respect to the ABL Obligations provided for herein shall have closed within ten (10) Business Days thereafter and the ABL Administrative Agent and the ABL Creditors shall have received payment in full of the ABL Obligations as provided for herein within such ten (10) Business Day period.

SECTION 5.9 Entry Upon Premises by the ABL Collateral Agent and the ABL Creditors (a) ABL Priority Collateral — Cooperation in Enforcement Action. If the ABL Collateral Agent takes any enforcement action with respect to the ABL Priority Collateral, the Term Secured Parties (i) shall cooperate with the ABL Collateral Agent (at the sole cost and expense of the ABL Collateral Agent and subject to the condition that the Term Secured Parties shall have no obligation or duty to take any action or refrain from taking any action that could reasonably be expected to result in the incurrence of any liability or damage to the Term Secured Parties) in its efforts to enforce its security interest in the ABL Priority Collateral and to finish any work-in-process and assemble the ABL Priority Collateral, (ii) shall not take any action designed or intended to hinder or restrict in any respect the ABL Collateral Agent from enforcing its security interest in the ABL Priority Collateral or from finishing any work-in-process or assembling the ABL Priority Collateral, and (iii) shall permit the ABL Collateral Agent, its employees, agents, advisers and representatives, at the sole cost and expense of the ABL Secured Parties and upon reasonable advance notice, to enter upon and use the Term Priority Collateral

32

(including (x) equipment, processors, computers and other machinery related to the storage or processing of records, documents or files and (y) intellectual property), for a period not to exceed 180 days after the taking of such enforcement action, for purposes of (A) assembling and storing the ABL Priority Collateral and completing the processing of and turning into finished goods of any ABL Priority Collateral consisting of work-in-process, (B) selling any or all of the ABL Priority Collateral located on such Term Priority Collateral, whether in bulk, in lots or to customers in the ordinary course of business or otherwise, (C) removing any or all of the ABL Priority Collateral located on such Term Priority Collateral, or (D) taking reasonable actions to protect, secure, and otherwise enforce the rights of the ABL Secured Parties in and to the ABL

Priority Collateral, and the Term Secured Parties hereby irrevocably grant to the ABL Collateral Agent a non-exclusive license or other right to use, for such time and without charge, such intellectual property, equipment, processors, computers and other machinery as it pertains to the ABL Priority Collateral in finishing, assembling, advertising for sale and/or selling any ABL Priority Collateral; provided, however, that nothing contained in this Agreement shall restrict the rights of the ABL Collateral Agent from selling, assigning or otherwise transferring any ABL Priority Collateral prior to the expiration of such 180-day period if the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 5.9. If any stay or other order prohibiting the exercise of remedies with respect to the ABL Priority Collateral has been entered by a court of competent jurisdiction, such 180-day period shall be tolled during the pendency of any such stay or other order. If the ABL Collateral Agent conducts a public auction or private sale of the ABL Priority Collateral at any of the real property included within the ABL Priority Collateral, the ABL Collateral Agent shall provide the Term Collateral Agent with reasonable notice and use reasonable efforts to hold such auction or sale in a manner which would not unduly disrupt the Term Collateral Agent's use of such real property.

(b) ABL Priority Collateral—Responsibilities of ABL Secured Parties with respect to Enforcement Action During the period of actual occupation, use or control by the ABL Secured Parties or their agents or representatives of any Term Priority Collateral, the ABL Secured Parties shall (i) be responsible for the ordinary course third party expenses related thereto, including costs with respect to heat, light, electricity, water and real property taxes with respect to that portion of any premises so used or occupied, and (ii) be obligated to repair at their expense any physical damage to such Term Priority Collateral or other assets or property resulting from such occupancy, use or control, and to leave such Term Priority Collateral or other assets or property in substantially the same condition as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted. The ABL Secured Parties jointly and severally agree to pay, indemnify and hold the Term Collateral Agent and their respective officers, directors, employees and agents harmless from and against any liability, cost, expense, loss or damages, including legal fees and expenses, resulting from the gross negligence or willful misconduct of the ABL Collateral Agent or any of its agents, representatives or invitees in its or their operation of such facilities. Notwithstanding the foregoing, in no event shall the ABL Secured Parties have any liability to the Term Secured Parties pursuant to this Section 5.9 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Priority Collateral existing prior to the date of the exercise by the ABL Secured Parties of their rights under this Section 5.9 and the ABL Secured Parties shall have no duty or liability to maintain the Term Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by the ABL Secured Parties, or for any diminution in the value of the Term Priority Collateral that results solely from ordinary wear

33

and tear resulting from the use of the Term Priority Collateral by the ABL Secured Parties in the manner and for the time periods specified under this Section 5.9. Without limiting the rights granted in this paragraph, the ABL Secured Parties shall cooperate with the Term Secured Parties in connection with any efforts made by the Term Secured Parties to sell the Term Priority Collateral.

SECTION 5.10 Rights under Permits and Licenses. The Term Collateral Agent agrees that if the ABL Collateral Agent shall require rights available under any permit or license controlled by the Term Collateral Agent in order to realize on any ABL Priority Collateral, the Term Collateral Agent shall take all such actions as shall be available to it (at the sole expense of the Grantors), consistent with applicable law and reasonably requested by the ABL Collateral Agent to make such rights available to the ABL Collateral Agent, subject to the Liens on the Term Priority Collateral created under the Term Security Documents to secure the Term Obligations. The ABL Collateral Agent agrees that if the Term Collateral Agent shall require rights available under any permit or license controlled by the ABL Collateral Agent in order to realize on any Term Priority Collateral, the ABL Collateral Agent shall take all such actions as shall be available to it (at the sole expense of the Grantors), consistent with applicable law and reasonably requested by the Term Collateral Agent to make such rights available to the Term Collateral Agent, subject to the Liens on the ABL Priority Collateral created under the ABL Security Documents to secure the ABL Obligations.

ARTICLE VI

INSOLVENCY OR LIQUIDATION PROCEEDINGS

SECTION 6.1 Finance and Sale Issues. (a) ABL Creditor Post-Petition Financing. (i) If the Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the ABL Collateral Agent (acting at the direction of the Required ABL Creditors) shall desire to permit the Borrower or any other Grantor to obtain financing (including on a priming basis), from the ABL Creditors under Section 362, 363 or 364 of the Bankruptcy Code or debtor-in-possession financing under any other Bankruptcy Law (each, an "ABL Creditor Post-Petition Financing"), and provided that (A) the aggregate amount of ABL Obligations outstanding as of the commencement of the Insolvency or Liquidation Proceeding is at least \$25,000,000 and (B) the Exposure Amount does not exceed the Maximum Exposure Amount at any time during the pendency of the Insolvency or Liquidation Proceeding, then, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each agree that it will not oppose or raise any objection to or contest (or join with or support any third party opposing, objecting to or contesting), on any basis applicable solely to a secured creditor in such Insolvency or Liquidation Proceeding, such use or provision of ABL Creditor Post-Petition Financing and will not request adequate protection or any other relief in to which a secured creditor may otherwise be entitled in connection therewith (except as expressly agreed in writing by the ABL Collateral Agent or to the extent permitted by Section 6.3) and, to the extent the Liens securing the ABL Obligations are subordinated to or pari passu with such ABL Creditor Post-Petition Financing, its Liens on the ABL Priority Collateral shall be deemed to be subordinated, without any further action on the part of any Person, to the Liens securing such

34

ABL Creditor Post-Petition Financing (and all Obligations relating thereto), and the Liens securing the Term Obligations shall have the same priority with respect to the ABL Priority Collateral relative to the Liens securing the ABL Obligations as if such ABL Creditor Post-Petition Financing had not occurred and the Liens on the Term Priority Collateral shall be deemed to be subordinated, without any further action on the part of any Person, to the Liens securing such ABL Creditor Post-Petition Financing (and all Obligations relating thereto). Furthermore, and notwithstanding anything to the contrary contained above in this Section 6.1(a), the Term Collateral Agent and the Term Creditors may object for any reason and on any basis (whether assertable by, or applicable to, a secured or general unsecured creditor, and including without limitation, any objection based on the lack of adequate protection) to any ABL Creditor Post-Petition Financing which (A) causes the Exposure Amount to exceed the Maximum Exposure Amount, or (B) is made or permitted to be made at any time that the Exposure Amount exceeds the Maximum Exposure Amount. Notwithstanding anything herein to the contrary, and without limiting the provisions of the immediately preceding sentence, this Section 6.1(a)(i) does not prevent the Term Creditors from (i) objecting to any ABL Post-Petition Financing that purports to govern or control the provisions or content of a plan of reorganization (other than providing for satisfaction in full in cash of the ABL Creditor Post-Petition Financing on or prior to the effective date of such plan of reorganization) or (ii) proposing any other post-petition financing to the Borrower or the Bankruptcy Court.

(ii) The Term Collateral Agent, on behalf of itself and the other Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each agree that solely in its capacity as a secured creditor and not as an unsecured creditor, it will consent to and raise no objection to, oppose or contest (or join with or support any third party opposing, objecting to or contesting), a sale or other disposition of any ABL Priority Collateral in the context of an Insolvency or Liquidation Proceeding free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code or any other court approved sale pursuant to any other Insolvency and Liquidation Proceeding if the ABL Creditors have consented to such sale or disposition of such assets; provided, that (i) the net cash proceeds from the sale or disposition are applied first to the ABL Obligations and (ii) any such sale or disposition must be approved by the bankruptcy court (or other court) with jurisdiction over the sale (the "Bankruptcy Court") by an order that: (a) contains a specific finding that the sale or disposition being approved is commercially reasonable; and (b) provides that any consideration received in connection with such sale or disposition that exceeds the amount of the ABL Obligations shall be used to satisfy the Term Obligations or shall remain encumbered by the Term Obligations with the same priority and subject to the same limitations set forth herein with respect to their Liens on the ABL Priority Collateral.

(b) Term Creditor Post-Petition Financing. (i) If the Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the Term Collateral Agent (acting at the direction of the Required Term Creditors) shall desire to permit the Borrower or any other Grantor to obtain financing (including on a priming basis), from the Term Creditors under Section 362, 363 or 364 of the Bankruptcy Code or debtor-in-possession financing under any other Bankruptcy Law (each, a “Term Creditor Post-Petition Financing”), and provided that (A) the aggregate amount of ABL Obligations outstanding as of the

35

commencement of the Insolvency or Liquidation Proceeding is less than \$25,000,000 and (B) the Exposure Amount does not exceed the Maximum Exposure Amount at any time during the pendency of the Insolvency or Liquidation Proceeding, then the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that it will not oppose or raise any objection to or contest (or join with or support any third party opposing, objecting to or contesting), on any basis applicable solely to a secured creditor in such Insolvency or Liquidation Proceeding, such use or provision of Term Creditor Post-Petition Financing and, to the extent the Liens securing the Term Obligations are subordinated to or pari passu with such Term Creditor Post-Petition Financing, its Liens on the Term Priority Collateral shall be deemed to be subordinated, without any further action on the part of any Person, to the Liens securing such Term Creditor Post-Petition Financing (and all Obligations relating thereto). Furthermore, and notwithstanding anything to the contrary contained above in this Section 6.1(b), the ABL Collateral Agent and the ABL Creditors may object for any reason and on any basis (whether assertable by, or applicable to, a secured or general unsecured creditor, and including, without limitation, any objection based on the lack of adequate protection) to any Term Creditor Post-Petition Financing which (A) causes the Exposure Amount to exceed the Maximum Exposure Amount or (B) is made or permitted to be made at any time that the Exposure Amount exceeds the Maximum Exposure Amount. Notwithstanding anything herein to the contrary, and without limiting the provisions of the immediately preceding sentence, this Section 6.1(b)(i) does not prevent the ABL Creditors from (i) objecting to any Term Post-Petition Financing that purports to govern or control the provisions or content of a plan of reorganization (other than providing for satisfaction in full in cash of the Term Creditor Post-Petition Financing on or prior to the effective date of such plan of reorganization) or (ii) proposing any other post-petition financing to the Borrower or the Bankruptcy Court.

(ii) The ABL Collateral Agent, on behalf of itself and the other ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that solely in its capacity as a secured creditor and not as an unsecured creditor, it will consent to and raise no objection to, oppose or contest (or join with or support any third party opposing, objecting to or contesting), a sale or other disposition of any Term Priority Collateral in the context of an Insolvency or Liquidation Proceeding free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code or any court approved sale pursuant to any other Insolvency or Liquidation Proceeding if the Term Creditors have consented to such sale or disposition of such assets; provided that (i) the net cash proceeds from the sale or disposition are applied first to the Term Obligations and (ii) any such sale or disposition must be approved by the Bankruptcy Court with jurisdiction over the sale by an order that: (a) contains a specific finding that the sale or disposition being approved is commercially reasonable; and (b) provides that any consideration received in connection with such sale or disposition that exceeds the amount of the Term Obligations shall be used to satisfy the ABL Obligations, or shall remain encumbered by the ABL Obligations, with the same priority and subject to the same limitations set forth herein with respect to their Liens on the Collateral.

36

SECTION 6.2 Relief from the Automatic Stay.

(a) ABL Priority Collateral. Until the Discharge of ABL Obligations has occurred, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) agree that none of them shall seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in any Insolvency or Liquidation Proceeding in respect of the ABL Priority Collateral, without the prior written consent of the ABL Collateral Agent.

(b) Term Priority Collateral. Until the Discharge of Term Obligations has occurred, the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), agree that none of them shall seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in any Insolvency or Liquidation Proceeding in respect of the Term Priority Collateral, without the prior written consent of the Term Collateral Agent.

SECTION 6.3 Adequate Protection. (a) ABL Priority Collateral. (i) The Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) each agree that, until the Discharge of ABL Obligations has occurred or the termination of the Liens on the ABL Priority Collateral of the ABL Collateral Agent, on behalf of the ABL Creditors, has occurred, with respect to the ABL Priority Collateral, none of them shall oppose, object to or contest (or join with or support any third party opposing, objecting to or contesting) (a) any request by the ABL Collateral Agent or the ABL Creditors for adequate protection in any Insolvency or Liquidation Proceeding (or any granting of such request) or (b) any objection by the ABL Collateral Agent or the ABL Creditors to any motion, relief, action or proceeding based on the ABL Collateral Agent or the ABL Creditors claiming a lack of adequate protection.

(ii) [RESERVED]

(iii) Except as set forth in this Article VI, the Term Collateral Agent and the Term Creditors shall not be limited from seeking adequate protection with respect to their rights in the ABL Priority Collateral in an Insolvency or Liquidation Proceeding (including adequate protection in the form of cash payments of interest or otherwise).

(b) Term Priority Collateral. (i) The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that, until the Discharge of Term Obligations has occurred or the termination of the Liens on the Term Priority Collateral of the Term Collateral Agent, on behalf of the Term Creditors, has occurred, with respect to the Term Priority Collateral, none of them shall oppose, object to or contest (or join with or support any third party opposing, objecting to or contesting) (a) any request by the Term Collateral Agent or the Term Creditors for adequate protection in any Insolvency or Liquidation Proceeding (or any granting of such request) or (b) any objection by the Term Collateral Agent or the Term Creditors to any motion, relief, action or proceeding based on the Term Collateral Agent or the Term Creditors claiming a lack of adequate protection.

37

(ii) [RESERVED]

(iii) Except as set forth in this Article VI, the ABL Collateral Agent and the ABL Creditors shall not be limited from seeking adequate protection with respect to their rights in the Term Priority Collateral in an Insolvency or Liquidation Proceeding (including adequate protection in the form of cash payments of interest or otherwise).

SECTION 6.4 No Waiver: Voting Rights. (a) ABL Priority Collateral. (i) Nothing contained herein shall prohibit or in any way limit the ABL Collateral Agent or any ABL Creditor from objecting on any basis in any Insolvency or Liquidation Proceeding or otherwise to any action taken with respect to the ABL

Priority Collateral by the Term Collateral Agent or any Term Creditor, including the seeking by the Term Collateral Agent or any Term Creditor of adequate protection or the assertion by the Term Collateral Agent or any Term Creditor of any of its rights and remedies under the Term Loan Documents or otherwise. In any Insolvency or Liquidation Proceeding, neither the Term Collateral Agent nor any other Term Creditor shall propose or support any plan of reorganization, plan or arrangement or disclosure statement, or join with or support any third party in doing so, to the extent the terms of such plan or disclosure statement are inconsistent with the terms of this Agreement as to the treatment of ABL Priority Collateral.

(b) Term Priority Collateral. (i) Nothing contained herein shall prohibit or in any way limit the Term Collateral Agent or any Term Creditor from objecting on any basis in any Insolvency or Liquidation Proceeding or otherwise to any action taken with respect to the Term Priority Collateral by the ABL Collateral Agent or any ABL Creditor, including the seeking by the ABL Collateral Agent or any ABL Creditor of adequate protection or the assertion by the ABL Collateral Agent or any ABL Creditor of any of its rights and remedies under the ABL Loan Documents or otherwise. In any Insolvency or Liquidation Proceeding, neither the ABL Collateral Agent nor any other ABL Creditor shall propose or support any plan of reorganization, plan of arrangement or disclosure statement, or join with or support any third party in doing so, to the extent the terms of such plan or disclosure statement are inconsistent with the terms of this Agreement as to the treatment of Term Priority Collateral.

SECTION 6.5 Preference Issues. (a) Reinstatement of ABL Obligations. If any ABL Creditor is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower or any other Grantor any amount (an "ABL Recovery"), then the ABL Obligations shall be reinstated to the extent of such ABL Recovery and the ABL Creditors shall be entitled to a reinstatement of ABL Obligations with respect to all such recovered amounts. In such event, any Discharge of ABL Obligations for all purposes of this Agreement shall be deemed to have not occurred (unless and until same subsequently occurs with respect to the ABL Obligations after giving effect to the provisions to this Section 6.5(a)). If this Agreement shall have been terminated prior to such ABL Recovery, this Agreement shall be reinstated in full force and effect (and any prior Discharge of ABL Obligations shall be deemed not to have occurred), and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Any amounts received by the Term Collateral Agent or any Term Creditor on account of the Term Obligations from proceeds of ABL Priority Collateral, after the termination of this

38

Agreement (or any prior Discharge of ABL Obligations) shall, in the event of a reinstatement pursuant to this Section 6.5(a), be held in trust for and paid over to the ABL Collateral Agent for the benefit of the ABL Creditors, for application to the reinstated ABL Obligations.

(b) Reinstatement of Term Obligations. If any Term Creditor is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower or any other Grantor any amount (a "Term Recovery"), then the Term Obligations shall be reinstated to the extent of such Term Recovery and the Term Creditors shall be entitled to a reinstatement of Term Obligations with respect to all such recovered amounts. In such event, any Discharge of Term Obligations for all purposes of this Agreement shall be deemed to have not occurred (unless and until same subsequently occurs with respect to the Term Obligations after giving effect to the provisions to this Section 6.5(b)). If this Agreement shall have been terminated prior to such Term Recovery, this Agreement shall be reinstated in full force and effect (and any prior Discharge of Term Obligations shall be deemed not to have occurred), and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Any amounts received by the ABL Collateral Agent or any ABL Creditor on account of the ABL Obligations from proceeds of Term Priority Collateral, after the termination of this Agreement (or any prior Discharge of Term Obligations) shall, in the event of a reinstatement pursuant to this Section 6.5(b), be held in trust for and paid over to the Term Collateral Agent for the benefit of the Term Creditors, for application to the reinstated Term Obligations.

(c) This Section 6.5 shall survive termination of this Agreement.

SECTION 6.6 Post-Petition Interest. (a) Claims by ABL Creditors. Neither the Term Collateral Agent nor any Term Creditor shall oppose or seek to challenge any claim by the ABL Collateral Agent or any ABL Creditor for allowance in any Insolvency or Liquidation Proceeding of ABL Obligations consisting of post-petition or post-filing interest, fees or expenses to the extent of the value of the ABL Creditors' Lien on (i) the ABL Priority Collateral (without regard to the existence of the Term Creditors' Lien thereon) and (ii) the Term Priority Collateral (after taking into account the Term Creditors' Lien thereon).

(b) Claims by Term Creditors. Neither the ABL Collateral Agent nor the ABL Creditors shall oppose or seek to challenge any claim by the Term Collateral Agent or any Term Creditor for allowance in any Insolvency or Liquidation Proceeding of Term Obligations consisting of post-petition or post-filing interest, fees or expenses to the extent of the value of the Term Creditors' Lien on (i) the Term Priority Collateral (without regard to the existence of the ABL Creditors' Lien thereon) and (ii) the ABL Priority Collateral (after taking into account the ABL Creditors' Lien thereon).

(c) [RESERVED]

(d) Separate Classes. Without limiting the foregoing, it is the intention of the parties hereto that (and to the maximum extent permitted by law the parties hereto agree that) (x) the Term Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the ABL Obligations (and the security therefor), (y) the ABL

39

Obligations (and the security therefor) constitute a separate and distinct class (and separate and distinct claims) from the Term Obligations (and the security therefor).

SECTION 6.7 Voting for Plan of Reorganization. Each of the ABL Creditors, and the Term Creditors shall be entitled to vote as separate classes with respect to any plan of reorganization or arrangement in connection with any Insolvency or Liquidation Proceeding; provided, however, that the ABL Administrative Agent, on behalf of itself and the ABL Creditors and the Term Administrative Agent on behalf of itself and the Term Creditors agree that neither the ABL Administrative Agent nor the Term Administrative Agent nor any ABL Creditor nor Term Creditor shall take any action or vote in any way which supports any plan of reorganization or arrangement that is inconsistent with the terms of this Agreement.

ARTICLE VII

RELIANCE; WAIVERS; ETC.

SECTION 7.1 Reliance. Other than any reliance on the terms of this Agreement, the ABL Collateral Agent, on behalf of itself and the ABL Creditors under its ABL Loan Documents, acknowledges that it and such ABL Creditors have, independently and without reliance on the Term Collateral Agent or any Term Creditor, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into such ABL Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the ABL Credit Agreement or this Agreement. The Term Collateral Agent, on behalf of itself and the Term Creditors, acknowledges that it and the Term Creditors have, independently and without reliance on the ABL Collateral Agent or any ABL Creditor, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Term Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Term Loan Documents or this Agreement.

SECTION 7.2 No Warranties or Liability. ABL Collateral Agent, on behalf of itself and the ABL Creditors under the ABL Loan Documents,

acknowledge and agree that each of the Term Collateral Agent and the Term Creditors have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Term Loan Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The Term Creditors will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Term Collateral Agent, on behalf of itself and the Term Creditors under the Term Loan Documents, acknowledge and agree that each of the ABL Collateral Agent and the ABL Creditors have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the ABL Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The ABL Creditors will be entitled to manage and supervise their respective loans and extensions of credit under their respective ABL Documents in accordance with law and as they

may otherwise, in their sole discretion, deem appropriate. The Term Collateral Agent and the Term Creditors shall have no duty to the ABL Collateral Agent or any of the ABL Creditors, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Borrower or any Grantor (including the ABL Loan Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with. The ABL Collateral Agent and the ABL Creditors shall have no duty to the Term Collateral Agent or any of the Term Creditors, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Borrower or any Grantor (including the ABL Loan Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

SECTION 7.3 No Waiver of Lien Priorities. (a) **Failure to Act.** (i) No right of the ABL Creditors, the ABL Collateral Agent or any of them to enforce any provision of this Agreement or any ABL Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Borrower or any other Grantor or by any act or failure to act by any ABL Creditor or the ABL Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the ABL Loan Documents or any of the Term Loan Documents, regardless of any knowledge thereof which the ABL Collateral Agent or the ABL Creditors, or any of them, may have or be otherwise charged with.

(ii) No right of the Term Creditors, the Term Collateral Agent or any of them to enforce any provision of this Agreement or any Term Loan Document (subject to the provisions of this Agreement) shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Borrower or any other Grantor or by any act or failure to act by any Term Creditor or the Term Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Term Loan Documents or any ABL Loan Document, regardless of any knowledge thereof which the Term Collateral Agent or the Term Creditors, or any of them, may have or be otherwise charged with.

(b) **Acts by ABL Creditors.** Without in any way limiting the generality of Section 7.3(a) (but subject to the rights of the Borrower and the other Grantors under the ABL Loan Documents), the ABL Creditors, the ABL Collateral Agent and any of them may, at any time and from time to time in accordance with the ABL Loan Documents, this Agreement (including Section 5.3) and/or applicable law, without the consent of, or notice to, the Term Collateral Agent or any Term Creditor without incurring any liabilities to the Term Collateral Agent or any other Term Creditor and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the Term Collateral Agent or any Term Creditor is affected, impaired or extinguished thereby) do any one or more of the following, but subject to the limitations set forth in this Agreement:

(i) make loans and advances to any Grantor or issue, guaranty or obtain letters of credit for account of any Grantor or otherwise extend credit to any Grantor, in any amount and on any terms, whether pursuant to a commitment or as a

discretionary advance and whether or not any default or event of default or failure of condition is then continuing;

(ii) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the ABL Obligations or any Lien on any ABL Priority Collateral or guaranty thereof or any liability of the Borrower or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the ABL Obligations, subject to Section 5.3) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens with respect to the ABL Priority Collateral held by the ABL Collateral Agent or any of the ABL Creditors, the ABL Obligations or any of the ABL Loan Documents;

(iii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the ABL Priority Collateral or any liability of the Borrower or any other Grantor to the ABL Creditors or the ABL Collateral Agent, or any liability incurred directly or indirectly in respect thereof;

(iv) settle or compromise any ABL Obligation or any other liability of the Borrower or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the ABL Obligations) in any manner or order;

(v) exercise or delay in or refrain from exercising any right or remedy against the Borrower or any other Grantor or any other Person or with respect to any security, elect any remedy and otherwise deal freely with the Borrower, any other Grantor or any ABL Priority Collateral and any security and any guarantor or any liability of the Borrower or any other Grantor to the ABL Creditors or any liability incurred directly or indirectly in respect thereof; and

(vi) release or discharge any ABL Obligation or any guaranty thereof or any agreement or obligation of any Grantor or any other Person with respect thereto.

(c) **Waivers by the Term Collateral Agent.** The Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the ABL Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

(d) **Acts by Term Creditors.** Without in any way limiting the generality of Section 7.3(a) (but subject to the rights of the Borrower and the other Grantors under the Term Loan Documents), the Term Creditors, the Term Collateral Agent and any of them may, at any time and from time to time in accordance with the Term Loan Documents, this Agreement

(including Section 5.3) and/or applicable law, without the consent of, or notice to, the ABL Collateral Agent or any ABL Creditor without incurring any liabilities to the ABL

Collateral Agent or any ABL Creditor and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the ABL Collateral Agent or any ABL Creditor with respect to the Term Priority Collateral is affected, impaired or extinguished thereby), do any one or more of the following, but subject to the limitations set forth in this Agreement:

- (i) make loans and advances to any Grantor or issue, guaranty or obtain letters of credit for account of any Grantor or otherwise extend credit to any Grantor, in any amount and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any default or event of default or failure of condition is then continuing;
- (ii) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Term Obligations or any Lien on any Term Priority Collateral or guaranty thereof or any liability of the Borrower or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Term Obligations, subject to Section 5.3) or, subject to the terms hereof (including Section 5.3), otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the Term Collateral Agent or any of the Term Creditors, the Term Obligations or any of the Term Loan Documents;
- (iii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Term Priority Collateral or any liability of the Borrower or any other Grantor to the Term Creditors or the Term Collateral Agent, or any liability incurred directly or indirectly in respect thereof;
- (iv) settle or compromise any Term Obligation or any other liability of the Borrower or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the Term Obligations) in any manner or order;
- (v) except or otherwise restricted by the Agreement, including Section 5.3 and 5.4, and by applicable law, exercise or delay in or refrain from exercising any right or remedy against the Borrower or any other Grantor or any other Person or with respect to any security, elect any remedy and otherwise deal freely with the Borrower, any other Grantor or any Term Priority Collateral and any security and any guarantor or any liability of the Borrower or any other Grantor to the Term Creditors or any liability incurred directly or indirectly in respect thereof; and
- (vi) release or discharge any Term Obligation or any guaranty thereof or any agreement or obligation of any Grantor or any other Person with respect thereto.

43

(e) Waivers by the ABL Collateral Agent. The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

SECTION 7.4 Waiver of Liability; Indemnity (a) ABL Priority Collateral. With respect to the ABL Priority Collateral, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents) each agree that the ABL Creditors and the ABL Collateral Agent shall have no liability to any of the Term Collateral Agent or any Term Creditors; and the Term Collateral Agent, on behalf of itself and the Term Creditors; and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each hereby waive any claim against any ABL Creditor (or the ABL Collateral Agent), arising out of any and all actions which the ABL Creditors or the ABL Collateral Agent may take or permit or omit to take with respect to: (i) the ABL Loan Documents (including, without limitation, any failure to perfect or obtain perfected security interests in the ABL Priority Collateral), (ii) the collection of the ABL Obligations or (iii) the foreclosure upon, or sale, liquidation or other disposition of, any ABL Priority Collateral. The Term Collateral Agent, on behalf of itself and the Term Creditors and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each agree that the ABL Creditors and the ABL Collateral Agent have no duty, express or implied, fiduciary or otherwise, to any of them in respect of the maintenance or preservation of the ABL Priority Collateral, the ABL Obligations or otherwise. Neither the ABL Collateral Agent nor any other ABL Creditor nor any of their respective directors, officers, employees or agents will be liable for failure to demand, collect or realize upon any of the ABL Priority Collateral or for any delay in doing so, or will be under any obligation to sell or otherwise dispose of any ABL Priority Collateral upon the request of any other Grantor or upon the request of the Term Collateral Agent, any other holder of Term Obligations or any other Person or to take any other action whatsoever with regard to the ABL Priority Collateral or any part thereof. Without limiting the foregoing, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each Term Creditor (by its acceptance of the benefits of the Term Loan Documents), each agree that neither the ABL Collateral Agent nor any other ABL Creditor (in directing the Collateral Agent to take any action with respect to the ABL Priority Collateral) shall have any duty or obligation to realize first upon any type of ABL Priority Collateral or to sell, dispose of or otherwise liquidate all or any portion of the ABL Priority Collateral in any manner, including as a result of the application of the principles of marshaling or otherwise, that would maximize the return to any class of Creditors holding Obligations of any type (whether ABL Obligations or Term Obligations), notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by such class of Creditors from such realization, sale, disposition or liquidation.

(b) Term Priority Collateral. With respect to the Term Priority Collateral, the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that the Term Creditors and the Term Collateral Agent shall have no liability to the ABL Collateral Agent or

44

any ABL Creditors; and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents) each hereby waive any claim against any Term Creditor (or the Term Collateral Agent), arising out of any and all actions which the Term Creditors or the Term Collateral Agent may take or permit or omit to take with respect to: (i) the Term Loan Documents (including, without limitation, any failure to perfect or obtain perfected security interests in the Term Collateral), (ii) the collection of the Term Obligations or (iii) the foreclosure upon, or sale, liquidation or other disposition of, any Term Priority Collateral. The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that the Term Creditors and the Term Collateral Agent have no duty, express or implied, fiduciary or otherwise, to any of them in respect of the maintenance or preservation of the Term Priority Collateral, the Term Obligations or otherwise. Neither the Term Collateral Agent nor any other Term Creditor nor any of their respective directors, officers, employees or agents will be liable for failure to demand, collect or realize upon any of the Term Priority Collateral or for any delay in doing so, or will be under any obligation to sell or otherwise dispose of any Term Priority Collateral upon the request of any other Grantor or upon the request of the ABL Collateral Agent, any other holder of ABL Obligations or any other Person or to take any other action whatsoever with regard to the Term Priority Collateral or any part thereof. Without limiting the foregoing, the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each ABL Creditor (by its acceptance of the benefits of the ABL Loan Documents), each agree that neither the Term Collateral Agent nor any other Term Creditor (in directing the Collateral Agent to take any action with respect to the Term Priority Collateral) shall have any duty or obligation to realize first upon any type of Term Priority Collateral or to sell, dispose of or otherwise liquidate all or any portion of the Term Priority Collateral in any manner, including as a result of the application of the principles of marshaling or otherwise, that would maximize the return to any class of Creditors holding Obligations of any type (whether Term Obligations or ABL Obligations), notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by such class of Creditors from such realization, sale, disposition or liquidation.

(c) Collateral Agent. With respect to its share of the Obligations, any Collateral Agent which is independently a Creditor shall have and may exercise

the same rights and powers hereunder as, and shall be subject to the same obligations and liabilities as and to the extent set forth herein for, any other Creditor, all as if such Collateral Agent were not a Collateral Agent. The term “Creditors” or any similar term shall, unless the context clearly otherwise indicates, include any Collateral Agent in its individual capacity as a Creditor. Each Collateral Agent and its affiliates may lend money to, and generally engage in any kind of business with, the Grantors or any of their Affiliates as if such Collateral Agent were not acting as a Collateral Agent and without any duty to account therefor to any other Creditor.

SECTION 7.5 Obligations Unconditional. All rights, interests, agreements and obligations of the ABL Collateral Agent and the ABL Creditors and the Term Collateral Agent and the Term Creditors, respectively, hereunder (including the Lien priorities established hereby) shall remain in full force and effect irrespective of:

- (a) any lack of validity or enforceability of any ABL Loan Document or any Term Loan Document;

45

(b) any change in the time, manner or place of payment of, or in any other terms of, all or any of the ABL Obligations or Term Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Loan Document or any Term Loan Document;

(c) any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Obligations or Term Obligations or any guarantee thereof;

- (d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Borrower or any other Grantor, or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Borrower or any other Grantor in respect of any of the ABL Obligations, or of the Term Collateral Agent or any Term Creditor in respect of this Agreement.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of the ABL Loan Documents or the Term Loan Documents, as between the parties other than the Grantors the provisions of this Agreement shall govern and control.

SECTION 8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and (i) the ABL Creditors may, at any time and without notice to the Term Collateral Agent or any Term Creditor and (ii) the Term Creditors may, at any time and without notice to the ABL Collateral Agent or any ABL Creditor, in each case, continue to extend credit and other financial accommodations and lend monies to or for the benefit of the Borrower or any Grantor constituting ABL Obligations (in the case of the ABL Creditors) or Term Obligations (in the case of the Term Creditors) in reliance hereof. The ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Documents) and the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Document), hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Without limiting the generality of the foregoing, this Agreement is intended to constitute and shall be deemed to constitute a “subordination agreement” within the meaning of Section 510(a) of the Bankruptcy Code and is intended to be and shall be interpreted to be enforceable to the maximum extent permitted pursuant to applicable nonbankruptcy law. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in

46

any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to the Borrower or any other Grantor shall include the Borrower or such Grantor as debtor and debtor-in-possession and any receiver or trustee for the Borrower or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect, (i) with respect to the ABL Collateral Agent, the ABL Creditors and the ABL Obligations, upon the Discharge of ABL Obligations (in a manner which is not in contravention of the terms of this Agreement), subject to the rights of the ABL Creditors and the Term Creditors under Section 6.5, and (ii) with respect to the Term Collateral Agent, the Term Creditors and the Term Obligations, the date of the Discharge of Term Obligations, subject to the rights of the Term Creditors and the ABL Creditors under Section 6.5.

SECTION 8.3 Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the ABL Collateral Agent or the Term Collateral Agent shall be made unless the same shall be in writing signed on behalf of each party hereto; provided that

(a) the ABL Collateral Agent (at the direction of the Required ABL Creditors) may, without the written consent of any other Creditor, agree to modifications of this Agreement for the purpose of securing additional extensions of credit (including pursuant to the ABL Credit Agreement or any Refinancing or extension thereof) and adding new creditors as “ABL Creditors” and “Creditors” hereunder, so long as such extensions (and resulting additions) do not otherwise give rise to a violation of the express terms of the ABL Credit Agreement and, without the prior written consent of the Term Collateral Agent, Section 5.3(a),

(b) the Term Collateral Agent (at the direction of the Required Term Creditors) may, without the written consent of any other Creditor, agree to modifications of this Agreement for the purpose of securing additional extensions of credit (including pursuant to the Term Credit Agreement or any Refinancing or extension thereof) and adding new creditors as “Term Creditors” and “Creditors” hereunder, so long as such extensions (and resulting additions) do not otherwise give rise to a violation of the express terms of the Term Credit Agreement and, without the prior written consent of the ABL Collateral Agent, Section 5.3(b),

- (c) additional Grantors may be added as parties hereto in accordance with the provisions of Section 8.18 of this Agreement.

Each waiver of the terms of this Agreement, if any, shall be a waiver only with respect to the specific instance involved and shall not impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, no Grantor shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights, interests, liabilities or privileges are directly affected or the provisions of any of the Documents are modified by the effect of any such amendment, modification or waiver. One of the Collateral Agents shall provide the Borrower with written notice of each amendment, modification and waiver, with a true and correct copy thereof.

47

SECTION 8.4 Information Concerning Financial Condition of the Grantors and their Subsidiaries. The ABL Collateral Agent and the ABL Creditors and the Term Collateral Agent and the Term Creditors, shall each be responsible for keeping themselves informed of (a) the financial condition of each Grantor and their

respective Subsidiaries and all endorsers and/or guarantors of the ABL Obligations or the Term Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Obligations or the Term Obligations. Except as otherwise set forth herein, none of the Collateral Agents nor any Creditor shall have any duty to advise any of the other Collateral Agents, or any other Creditor, of information known to it or them regarding such condition or any such circumstances or otherwise. With respect to the ABL Priority Collateral, in the event the ABL Collateral Agent or any of the ABL Creditors, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Term Collateral Agent or any Term Creditor, it or they shall be under no obligation (w) to make, and the ABL Collateral Agent and the ABL Creditors shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential. With respect to the Term Priority Collateral, in the event the Term Collateral Agent or any of the Term Creditors, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the ABL Collateral Agent or any ABL Creditor, it or they shall be under no obligation (w) to make, and the Term Collateral Agent and the Term Creditors shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

SECTION 8.5 Subrogation. Subject to the Discharge of ABL Obligations, with respect to the value of any payments or distributions in cash, property or other assets that any of the Term Creditors or the Term Collateral Agent pay over to the ABL Collateral Agent or ABL Creditors under the terms of this Agreement, the respective paying Creditors shall be subrogated to the rights of the payee Creditors; provided that, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Loan Documents), hereby agree not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of ABL Obligations has occurred. The Borrower acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by any of the Term Collateral Agent or the Term Creditors and paid over to the ABL Collateral Agent or the ABL Creditors pursuant to, and applied in accordance with this Agreement, shall not relieve or reduce any of the Obligations owed by the Borrower under the Term Loan Documents.

(b) Subject to the Discharge of Term Obligations, with respect to the value of any payments or distributions in cash, property or other assets that any of the ABL Collateral Agent or the ABL Creditors pay over to the Term Collateral Agent or Term Creditors under the

48

terms of this Agreement, the respective paying Creditors shall be subrogated to the rights of the payee Creditors; provided that, the Term Collateral Agent, on behalf of itself and the Term Creditors, and each other Term Creditor (by its acceptance of the benefits of the Term Credit Documents), and the ABL Collateral Agent, on behalf of itself and the ABL Creditors, and each other ABL Creditor (by its acceptance of the benefits of the ABL Credit Documents), hereby agree not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until, the Discharge of Term Obligations has occurred. The Borrower acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by the ABL Collateral Agent or the ABL Creditors and paid over to the Term Collateral Agent or the Term Creditors pursuant to, and applied in accordance with this Agreement, shall not relieve or reduce any of the Obligations owed by the Borrower under the ABL Loan Documents.

SECTION 8.6 Reserved.

SECTION 8.7 SUBMISSION TO JURISDICTION; WAIVERS. (a) THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(b) THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH EACH MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN SECTION 8.7(a). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT,

49

TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.7.

SECTION 8.8 Notices. All notices to the ABL Creditors or the Term Creditors permitted or required under this Agreement may be sent, respectively, to the ABL Collateral Agent or the Term Collateral Agent. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail or four Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

SECTION 8.9 Further Assurances. Each of (i) the ABL Collateral Agent, on behalf of itself and the ABL Creditors, (ii) the Term Collateral Agent, on behalf of itself and the Term Creditors and (iii) the Borrower, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any of the ABL Collateral Agent and/or the Term Collateral Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement. Each ABL Creditor, by its acceptance of the benefits of the ABL Loan Documents, agrees to be bound by the agreements herein made by it and the ABL Collateral Agent, on its behalf. Each Term Creditor, by its acceptance of the benefits of the Term Loan Documents, agrees to be bound by the agreements herein made by it and the Term Collateral Agent, on its behalf.

SECTION 8.10 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK INCLUDING GENERAL OBLIGATIONS LAW 5-1401.

SECTION 8.11 Binding on Successors and Assigns. This Agreement shall be binding upon the ABL Collateral Agent, the ABL Creditors, the Term Collateral Agent, the Term Creditors and their respective successors and assigns, including without limitation any successor or assign to all or a portion of the duties of any Collateral Agent (or any sub-agent or sub-collateral agent appointed by it).

SECTION 8.12 Specific Performance. Each of the ABL Collateral Agent and the Term Collateral Agent may demand specific performance of this Agreement. Each of the ABL Collateral Agent, on behalf of itself and the ABL Creditors and the Term Collateral Agent, on behalf of itself and the Term Creditors, hereby irrevocably waives any defense based on the

50

adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the ABL Collateral Agent or the Term Collateral Agent, as the case may be.

SECTION 8.13 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

SECTION 8.14 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

SECTION 8.15 Authorization. By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement. Each ABL Creditor, by its acceptance of the benefits of the ABL Loan Documents and each Term Creditor, by its acceptance of the benefits of the Term Loan Documents, agrees to be bound by the agreements made herein.

SECTION 8.16 No Third Party Beneficiaries: Effect of Agreement. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the ABL Creditors and the Term Creditors. No other Person shall have or be entitled to assert rights or benefits hereunder. Nothing in this Agreement shall impair, as between the Borrower and the ABL Collateral Agent and the ABL Creditors or the Borrower and the Term Collateral Agent and the Term Creditors, the obligations of the Borrower to pay principal, interest, fees and other amounts as provided in the ABL Loan Documents and the Term Loan Documents, respectively.

SECTION 8.17 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the ABL Creditors and the ABL Collateral Agent and the Term Creditors and the Term Collateral Agent. None of the Borrower, any other Grantor or any other creditor thereof shall have any rights hereunder. Nothing in this Agreement is intended to or shall impair the obligations of the Borrower or any other Grantor, which are absolute and unconditional, to pay the ABL Obligations and the Term Obligations as and when the same shall become due and payable in accordance with their terms.

SECTION 8.18 Grantors: Additional Grantors. It is understood and agreed that Holdings, the Borrower and each Subsidiary Guarantor on the date of this Agreement shall constitute the original Grantors party hereto. The original Grantors hereby covenant and agree to cause each Subsidiary of the Borrower which becomes a Subsidiary Guarantor after the date hereof to contemporaneously become a party hereto (as a Grantor) by executing and delivering a counterpart hereof to the ABL Collateral Agent and the Term Collateral Agent or by executing and delivering an assumption agreement in form and substance reasonably satisfactory to the

51

ABL Collateral Agent and the Term Collateral Agent. The parties hereto further agree that, notwithstanding any failure to take the actions required by the immediately preceding sentence, each Person which becomes a Subsidiary Guarantor at any time (and any security granted by any such Person) shall be subject to the provisions hereof as fully as if same constituted a Grantor party hereto and had complied with the requirements of the immediately preceding sentence.

52

IN WITNESS WHEREOF, the parties hereto have executed this Intercreditor Agreement as of the date first written above.

CREDIT SUISSE CAYMAN ISLANDS BRANCH in its capacity as ABL
Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[Signature Page to Intercreditor Agreement]

Notice Address

Eleven Madison Avenue, OMA-2
New York, NY 10010
Attention: Loan Services Manager
Telecopy: 212-538-3380
Telephone: 212-325-8304

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 S. Grand Ave, Suite 3400
Attention: David Kitchen
Telecopy: (213) 687-5600
Telephone: (213) 687-5000
Email: dkitchen@skadden.com

[Signature Page to Intercreditor Agreement]

JPMORGAN CHASE BANK, N.A., in its capacity as ABL Collateral Agent

By: _____

Name:
Title:

[Signature Page to Intercreditor Agreement]

Notice Address

Michael A. Hintz
Account Executive – ABL
111 East Wisconsin Ave., Floor 15
Milwaukee, WI 53202-4815

Telecopy: 414-977-6652
Telephone: 414-977-6666

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Suite 2100
Chicago, IL 60606
Attn: Seth E. Jacobson

Telecopy: 312-407-0700
Telephone: 312-407-0411

[Signature Page to Intercreditor Agreement]

CREDIT SUISSE, CAYMAN ISLANDS BRANCH, in its capacities as Term
Administrative Agent and Term Collateral Agent

By: _____

Name:
Title:

By: _____

Name:
Title:

[Signature Page to Intercreditor Agreement]

Notice Address

Eleven Madison Avenue, OMA-2
New York, NY 10010
Attention: Loan Services Manager
Telecopy: 212-538-3380
Telephone: 212-325-8304

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 S. Grand Ave, Suite 3400
Attention: David Kitchen
Telecopy: (213) 687-5600
Telephone: (213) 687-5000
Email: dkitchen@skadden.com

[Signature Page to Intercreditor Agreement]

Notice Address:

DOUGLAS DYNAMICS HOLDINGS, INC.

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

By: _____

Name
Title:

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

[Signature Page to Intercreditor Agreement]

Notice Address:

DOUGLAS DYNAMICS, L.L.C.

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

By: _____

Name
Title:

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

[Signature Page to Intercreditor Agreement]

Notice Address:

DOUGLAS DYNAMICS FINANCE COMPANY

7777 North 73rd Street
Milwaukee, WI 53223
Attention: Chief Executive Officer and President
Fax: 414-354-8448

By: _____

Name
Title:

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

[Signature Page to Intercreditor Agreement]

Notice Address:

FISHER, LLC

7777 North 73rd Street
Milwaukee, WI 53223

with a copy to:

Aurora Capital Group
10877 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90024
Attention: Secretary
Fax: 310-824-2791

[Signature Page to 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) <u>minus</u> 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.

O-1

(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.

O-2

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

O-3

**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
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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.

<u>Grantees (as a group)</u>	<u>Number of Awards Granted</u>
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 general account	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	
Payroll Clearing- TN		Douglas Dynamics, L.L.C.	

**Schedule 6.1
(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.